TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 91.

D. SULLIVAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF APPEALS FOR THE [illegible] JUDICIAL DISTRICT OF THE STATE OF TEXAS.

(20,353.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 91.

D. SULLIVAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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1 *Caption.*

THE STATE OF TEXAS, *County of Travis:*

At a term of the District Court of the 26th Judicial District of Texas begun and holden at Austin, within and for the County of Travis, before the Hon. V. L. Brooks, and ending on the 17th day of December, A. D. 1904, the following case came on for trial, to-wit:—

No. 18899.

THE STATE OF TEXAS
vs.
D. R. FANT.

Plaintiff's Original Petition.

Filed September 24th, 1902.

In the District Court of Travis County, 26th Judicial District of Texas, October Term, 1902.

THE STATE OF TEXAS, *County of Travis:*

To the Hon. R. L. Penn, Judge of said court:

The State of Texas, plaintiff herein, by and through C. K. Bell, Attorney General of said State, brings this suit and complaining of D. R. Fant, who resides in the County of Bexar, State of Texas, respectfully represents:

That on the 1st day of January, A. D. 1890, the State of Texas, plaintiff herein, then was and still is the owner in fee simple
2 (the same belonging to the common free school fund of the State of Texas) of a certain tract of land situated in the County of Hidalgo, in the State of Texas, and particularly described as follows, to-wit:—

Situated in Hidalgo County, fronting on the right margin of the Olmos Creek about ninety miles west of Brownsville.

Beginning at a post and mound of stone on the right margin of the Olmos Creek, about 100 varas below the crossing of the road leading from San Patricio to Brownsville, for the N. E. corner from which a mesquite marked X bears west 100 varas, and from which the S. W. corner of a survey in the name of Leonardo Songovia de la Garza bears N. 75½° E. 3260 varas.

Thence S. at 660 varas Brownsville road, bearing S. by East at 7700 varas the said road runs S. S. W. at 8000 varas, post in mound;

Thence East 1200 varas to a post in mound;

Thence South 1200 varas to a post from which a mesquite marked X bears N. 30° E. 5 varas;

Thence W. 1200 varas a post from which a mesquite marked X bears N. 22½° W. 4929 varas.

Thence South at 430 varas, Lagoon, at 1840 varas, oak for line tree at 4950 varas an oak 2 varas to the West, at 7400 varas, Brownsville road running South by East at 8400 varas, post in mound for the S. E. corner, from which a live oak in a mott marked XX bears S. 58° E. 606 varas.

Thence West at 10,420 varas, line tree in mott, at 16,900 varas, post for the S. W. corner.

Thence North at 4,300 varas Encinal timber, at 8360 varas two large live oaks bearing marks at the western end of the Charco del Tule, at 13,760 varas a stone mound on the S. E. margin of Olmos Creek for the N. W. corner, from which a mesquite on the Northern margin of said creek bears N. 27½° E.

Thence with the right margin of said Olmos creek and its meanders, down the stream to the place of beginning, containing
3 55,500 acres of land.

The plaintiff was in possession of said land and is now entitled to the possession of the same; that on the said 1st day of January, A. D. 1901 the defendant, without authority of law, entered upon said land and dispossessed the plaintiff thereof, and held, occupied and claimed the same adversely to plaintiff, and is still so doing, to plaintiff's damage in the sum of twenty thousand dollars.

That the rental value of said land is five cents per acre per annum.

That as plaintiff is informed and believes and here charges, the defendant claims title to said land, and to be entitled to the possession thereof, by virtue of a grant from either the Spanish or Mexican government, made for six and one half leagues of land to Pedro de la Garza, and Plaintiff here admits that there was such a grant in favor of the party named for the amount of six and one half leagues; that said grant was confirmed to the said original grantee thereof and to his heirs and legal assigns by the State of Texas, by virtue of an act of the Legislature of the State of Texas of the 10th day of February, A. D. 1852, for the full amount of six and one half leagues and no more.

That by the law of February 10th, 1852, above referred to said Pedro de la Garza or his heirs or legal assigns, as the case may have been, was required to have the said six and one half leagues of land surveyed by the district or county surveyor of Starr County, in which said land at that time was situated and upon return of the proper field notes thereof to the General Land Office, the Commissioner was authorized to have the same plotted on the maps of his office and to issue patents for the same in accordance with the existing laws, upon payment by the owner of said land of all the taxes due on the same from the date of the organization of the said County.

Plaintiff further alleges that neither the grantee of said six and one half leagues of land nor his heirs or assigns have had the land properly surveyed and proper field notes returned to the
4 General Land Office which sufficiently identifies the land claimed by virtue of said grant to enable it to be determined what land is claimed by virtue of the same.

Plaintiff further alleges that the defendant, claiming under and by virtue of said grant and the confirmation thereof, has taken possession of a great deal more land, which really belongs to the State of Texas, than the said six and one half leagues, but that neither the said defendant nor any one else has ever segregated from the public domain the amount of land which can be legally held by virtue of the aforesaid grant.

Premises considered, the State of Texas, plaintiff herein, prays that the defendant be cited to answer this petition as required by law; that upon final hearing hereof, the State of Texas, plaintiff herein, have judgment against the defendant for the recovery of the title and possession of all of said land in excess of the six and one-half leagues, with writ of possession for the same, and damages, and for the rental value of the use and occupation of such excess, together with ten per cent. thereon as attorney's fees, for costs of suit, and for all other and further relief to which plaintiff may be entitled both in law and in equity.

C. K. BELL.
Attorney General,
Attorney for the State of Texas, Plaintiff.

(Endorsed:) No. 18899. The State of Texas *vs.* D. R. Fant. Plaintiff's Original Petition. This action is brought as well to try title as for damages. Filed in Dist. Court Travis Co. Texas, 26th Jud. Dist. Sept. 24th, 1902, Jas. P. Hart, Clerk, by D. J. Pickle, Deputy.

5 *Application of D. Sullivan to Intervene.*

Filed May 30, 1904.

THE STATE OF TEXAS, *County of Travis:*

Suit Pending in the District Court of Travis County, Texas.

Now comes D. Sullivan of Bexar County, Texas, and respectfully shows to the Court that since the institution of this suit he has acrequired all the title of the Defendant D. R. Fant to the land in controversy.

That he acquired all of said interest on April 5, 1904;

Wherefore he prays for an order of Court allowing him to intervene in this suit as a party defendant.

OGDEN & BROOKS,
J. C. SULLIVAN,
Attorneys for D. Sullivan.

(Endorsed:) No. 18899. State of Texas *vs.* D. R. Fant. Application of D. Sullivan to Intervene. Filed May 30, 1904. Jas. P. Hart, Clerk.

Order Granting Leave to Intervene.

18899.

THE STATE OF TEXAS
vs.
D. R. FANT.

MAY 30TH, 1904.

And now on this the 30th day of May, 1904, it is ordered that D. Sullivan be and he is hereby granted leave to file petition in intervention, and this cause is ordered set for first day of next October term, 1904.

6 *Answer of D. R. Fant.*

Filed November 14, 1904.

In the District Court, 26th Judicial District, of Travis County, Texas.

No. —.

STATE OF TEXAS
vs.
D. R. FANT.

Now comes the defendant herein, D. R. Fant, and says:

(1) Defendant demurs to plaintiff's petition herein filed and says that same is insufficient in law to entitle plaintiff to the relief sought and of this said defendant prays the judgment of the court.

(2) Should the foregoing demurrer be overruled, then comes said defendant and denies all and singular the allegations in plaintiff's petition contained and pleads not guilty of the wrongs, injuries and trespasses in said petition charged against him.

OGDEN & BROOKS,
J. C. SULLIVAN,
Attorneys for Defendant, D. R. Fant.

(Endorsed:) No. 18899. State of Texas *vs.* D. R. Fant. Answer of intervening defendant D. R. Fant. Filed Nov. 14, 1904, Jas. P. Hart, Clerk.

Answer of D. Sullivan.

Filed November 14, 1904.

In the District Court, 26th Judicial District, of Travis County, Texas.

No. —.

STATE OF TEXAS
vs.
D. R. FANT.

Now comes D. Sullivan, intervening defendant herein, and says:—

7 (1) Said intervening defendant demurs to plaintiff's petition filed herein, and says that same is insufficient in law to entitle plaintiff to the relief sought, and of this said defendant prays that judgment of the Court:

(2) Should the foregoing demurrers be overruled, then comes the said intervening defendant, and denies all and singular the allegations in plaintiff's petition contained and pleads not guilty of the wrongs, injuries and trespasses in said petition charged against him.

OGDEN & BROOKS,
J. C. SULLIVAN,
Attorneys for D. Sullivan, Intervening Defendant.

(Endorsed:) No. 18899. State of Texas *vs.* D. R. Fant. Answer of defendant D. Sullivan, Filed Nov. 14, 1904, Jas. P. Hart, Clerk.

Judgment.

December 7th, 1904.

18899.

THE STATE OF TEXAS
vs.
D. R. FANT and D. S. SULLIVAN.

On the 14th day of November, 1904, this cause came on for trial, and the defendants presented a general demurrer to the plaintiff's petition, which having been considered by the Court was overruled, to which ruling the defendants then and there excepted.

Thereupon the cause came on for trial upon the merits, and both parties announcing ready for trial, a jury having been
8 waived, the matters in controversy, as well of fact as of law, were submitted to the Court; and the Court having heard the pleadings read, and having heard the evidence and argument of

counsel, is of opinion that the plaintiff is entitled to recover and now on this the 7th day of December, 1904, proceeds to render judgment.

It is therefore ordered, adjudged and decreed by the Court that the plaintiff, the State of Texas, do have and recover of and from the defendants, D. R. Fant, and D. Sullivan, the title to and possession of the following described tracts of land situated in Hidalgo County, Texas:

First Tract: Beginning at the N. E. corner of the San Antonio del Encinal Grant made to Jose Antonio Leal de Leon as patented, it being the entrecant corner of the Las Barrosas grant, as patented, and the S. E. corner of the Santa Rosa de Arriba grant, as surveyed by F. A. Blucher in 1859.

Thence S. 89° 48′ W. 2704.2 varas with the north line of the San Antonio del Encinal grant, as patented to a point.

Thence North 8653.4 varas to a corner which is due west from the northwest corner of survey No. 72, in the name of the G. C. & S. F. Ry. Co.

Thence east 2686.5 varas, more or less, to the northwest corner of survey No. 72 G. C. & S. F. Ry. Co.

Thence south with the west boundary lines of surveys Nos. 72, 71, 70 and 69, G. C. & S. F. Ry. Co. and the western boundary line of the Las Barrosas grant, as patented, 8644 varas to the place of beginning.

Containing 4131.66 acres more or less.

Second Tract: Beginning at a post and mound of stone on the right margin of the Olmos Creek, being the N. W. corner of survey No. 81, G. C. & S. F. R. R. Co.

Thence S. 00° 12′ E. with the W. line of surveys 81, 80, 77, 76 and 73, G. C. & S. F. R. R. Co., 8074 varas to the most northern S. W. corner of survey No. 73.

9 Thence West 2682.2 varas to a corner.

Thence north 8071.6 varas to a stake on the south bank of the Olmos Creek.

Thence down the said creek with its meanders as follows: N. 68° 30′ E. 162 varas; thence N. 88° E. 100 varas; thence S. 2° E. 121 varas; thence S. 79° 30′ E. 70 varas; thence S. 1° E. 160 varas; thence S. 25° E. 220 varas; thence S. 54° 30′ E. 330 varas; thence N. 54° E. 720 varas; thence N. 25° E. 330 varas; thence N. 54° 30′ E. 100 varas; thence N. 78° 50′ E. 350 varas; thence S. 86° 55′ E. 330 varas; thence N. 70° 5′ E. 170 varas; thence S. 6° 55′ E. 275 varas; thence N. 89° 20′ E. 300 varas to the place of beginning.

Containing 3813 acres of land, more or less.

Third tract: Beginning at a stake on the south bank of the Olmos Creek at a point 80 varas south of the most eastern S. E. corner of the Antonio Garcia grant, called "El Tule" as made by F. A. Blucher in 1859 and as patented, (said corner of the "El Tule" being an old mesquite post from which an old mesquite tree marked = on the north side bears S. 4° 15′ E. 43 varas, and the Salto Hill bears N. 70′ E. about 2200 varas).

Thence up the Olmos Creek with its meanders as follows: N. 70°

W. 110 varas; N. 41° 30′ W. 220 varas; N. 70° 30′ W. 250 varas; S. 67° 45′ W. 304.6 varas; N. 79° 15′ W. 346 varas; S. 51° W. 274 varas; N. 80° 15′ W. 140 varas; S. 87° 42′ W. 18.3 varas to the entrecant or L corner, on the south bank of the Olmos Creek, of the "El Tule," as surveyed by Blucher and as patented.

Thence S. 00° 48′ E. with the east line of the "El Tule" as patented at 6890 varas to the S. E. corner of said "El Tule" survey.

Thence S. 89° 12′ W. 660.2 varas to the eastern boundary line of survey No. 155, Texas-Mexican Railway Co.

Thence S. 00° 48′ E. 3726.7 varas with the eastern boundary line of surveys 155 and 156, Texas-Mexican Ry. Co., to the south-
10 east corner of said survey 156.

Thence West 1436.7 varas to the most northeast corner of the San Antonio del Encinal grant.

Thence S. 00° 18′ E. 3362.7 varas to the entrecant corner of the San Antonio del Encinal grant, as patented.

Thence N. 89° 48′ E. with the north boundary line of the San Antonio del Encinal grant, as patented, 3416.9 varas to a point 13966 varas due south of the place of beginning.

Thence north 13966 varas to the place of beginning.

It is further ordered, adjudged and decreed by the Court that a writ of possession issue to the Sheriff of Hidalgo County, commanding him to place the plaintiff in possession of the above described premises.

It further appearing to the Court that the defendant D. R. Fant had given to the defendant D. Sullivan, prior to the institution of the suit in this case, a deed of trust conveying all of the above described lands for the purpose of securing the said D. Sullivan in the payment of a debt, and that since the institution of said suit, to-wit: on the 6th day of May 1904, the said D. Sullivan had foreclosed the said deed of trust and had the property therein described sold, and had bought in same and became the owner of any interest the said D. R. Fant had in and to the same, and that the said D. Sullivan had assumed the possession of said property on the said 6th day of May, 1904, and that the said D. Sullivan had made himself a party defendant in this cause, and that the rental value of said premises was, without reference to the improvements placed thereon by the defendants, or either of them, of the value of three cents per acre per annum;

It is therefore ordered, adjudged and decreed by the Court that the plaintiff do have and recover of and from the said D. Sullivan the sum of $196.00 the rental value of said premises since the said Sullivan acquired possession of the same, for which execu-
11 tion may issue.

It is further ordered by the Court that the plaintiff take nothing by its suit as against either of the defendants for any part of the following described portion of the land sued for by the plaintiff, to-wit:—

Beginning at a stake on the south bank of the Olmos Creek said stake being the northeast corner of Tract No. 3 hereinbefore adjudged to the plaintiff, State of Texas, said stake being 80 varas

south of an old mesquite post placed by F. A. Blucher for the southeast corner of the Antonio Garcia Grant, called "El Tule," from which said old post an old mesquite tree marked ≡ on north side bears S. 4° 15″ E. 43 varas, and the Salto Hill bears N. 70° E. about 2200 varas.

Thence South with the east line of said Tract No. 3, 13966 varas to a stake (its southeast corner) on the south line of the Pedro de la Garza grant, called "Santa Rosa de Arriba" as surveyed by F. A. Blucher in 1859, said stake being on the north line of the Jose Antonio Leal de Leon grant, called "San Antonio del Encinal" as patented.

Thence N. 89° 48′ E. with said line 11088.9 varas to the southwest corner of a tract of 4131.66 acres hereinbefore adjudged to the plaintiff, State of Texas, said corner being 2704.2 varas S. 89° 12′ W. from the S. E. corner of said "Santa Rosa de Arriba" Grant as surveyed by Blucher in 1859, and the entrecant corner of the Las Barrosas grant, and the northeast corner of the San Antonio del Encinal grant, as patented.

Thence north with the west line of said tract of 4131.66 acres 8653.4 varas to the N. W. corner of said tract;

Thence east with the north line of said tract at 2686.5 varas, more or less, pass its N. E. corner; at 3896.5 varas a stake, the S. W. corner of survey No. 73, G. C. & S. F. Ry. Co.

Thence N. 00° 12′ W. 1234.5 varas to the entrecant corner of survey No. 73, G. C. & S. F. Ry. Co.

12 Thence West 1210 varas pass the most northern southwest corner of said survey No. 73, and the southeast corner of tract No. 2, hereinbefore adjudged to the plaintiff; at 3892 varas the S. W. corner of said 3813 acre tract hereinbefore adjudged to the plaintiff.

Thence north with the west line of said tract 8072.6 varas to a stake on the south bank of the Olmos Creek, same being the N. W. corner of said 3813 acre tract.

Thence up the Olmos Creek with its meanders as follows, viz: S. 66° 30′ W. 152 varas; S. 77° 30′ W. 143 varas; S. 56° W. 80 varas; S. 13° W. 69 varas; S. 87° 45′ W. 45 varas; N. 34° 45′ W. 200 varas; N. 3° 45′ W. 235 varas; N. 45° 45′ W. 160 varas; S. 73° 30′ W. 145 varas; S. 37° 15′ W. 430 varas; S. 47° 15′ W. 250 varas; N. 89° 30′ W. 60 varas; N. 53° 45′ W. 540 varas; N. 85° 45′ W. 270 varas; S. 82° W. 180 varas; S. 37° 30′ W. 250 varas; S. 54° W. 160 varas; S. 28° W. 150 varas; S. 79° W. 149 varas; N. 77° W. 358.5 varas; N. 25° 15′ W. 180 varas; N. 12° 30′ E. 193 varas; N. 21° W. 243 varas; N. 70° W. 101 varas; N. 28° 15′ W. 80 varas; S. 77° 30′ W. 71 varas; S. 29° 15′ W. 150 varas; S. 51° W. 171 varas; S. 8° 45′ W. 250 varas; S. 12° 30′ W. 297 varas; N. 80° 30′ W. 99 varas; N. 51° 30′ W. 99 varas; N. 51° 30′ W. 112 varas; S. 87° 30′ W. 617 varas; N. 64° W. 320 varas; S. 68° 30′ W. 230 varas; S. 35° 15′ W. 86 varas; S. 13° 15′ E. 220 varas; S. 45° W. 100 varas S. 74° W. 330 varas; N. 73° 45′ W. 320 varas; N. 86° 45′ W. 160 varas; S. 84° 45′ W. 150 varas; S. 89° 45′ W. 340 varas; S. 67° 45′ W. 270 varas; S. 87° 15′ W. 430 varas; N. 45° 15′ W. 240 varas; S.

58° 45′ W. 100 varas S. 10° W. 175 varas S. 3° E. 150 varas; S. 19° W. 165 varas; S. 3° E. 287 varas; S. 39° 15′ W. 240 varas; S. 20° 45′ W. 230 varas; S. 52° 15′ W. 110 varas; S. 88° W. 155 varas; S. 32° W. 105 varas; S. 42° 30′ E. 160 varas; S. 83° E. 125 varas; S. 15° 30′ E. 183 varas; S. 13° 30′ W. 180 varas; S. 54° 45′ W. 150 varas; N. 64° 15′ W. 180 varas; S. 85° 45′ W. 62 varas; S. 53° 15′ W. 77 varas; S. 28° 15′ W. 290 varas; S. 46° E. 200
13 varas; S. 22° 15′ E. 210 varas; S. 35° 15′ W. 270 varas; N. 74° 30′ W. 130 varas; N. 31° 45′ W. 310 varas; N. 76° 15′ W. 82 varas; N. 87° 15′ W. 100 varas; S. 24° W. 130 varas; S. 6° W. 190 varas; S. 61° 45′ W. 206 varas; N. 66° 30′ W. 195 varas; N. 74° 45′ W. 230 varas; S. 14° 15′ W. 320 varas; S. 82° 15′ W. 180 varas; S. 61° 30′ W. 178 varas; N. 53° 30′ W. 250 varas; S. 76° 30′ W. 438 varas; N. 86° 45′ W. 329 varas; N. 54° 45′ W. 360 varas; S. 38° W. 460 varas; N. 70° W. 90.5 varas to the place of beginning.

It is further ordered, adjudged and decreed by the Court that the Plaintiff, the State of Texas, take nothing by its suit as against either of the defendants as to any land described in said petition, lying west of the western boundary line of Tract No. 3 hereinbefore described.

It is further ordered, adjudged and decreed by the court that the plaintiff have and recover of and from defendants all costs in this behalf expended, for all which let execution issue.

Motion for New Trial.

Filed December 8, 1904.

In the District Court, 26th Judicial District, of Travis County, Texas.

No. 18899.

THE STATE OF TEXAS
vs.
D. R. FANT and D. SULLIVAN.

Now come D. R. Fant and D. Sullivan, defendants in the above entitled cause, and move the court to grant them a new trial herein for the following reasons, to-wit:—

(1) Because the Court erred in overruling the defendant's general demurrer to plaintiff's petition.

(2) Because the Court erred in its ruling on the admission and rejection of testimony, as set out in defendant's bills of ex-
14 ceptions.

(3) Because the Court erred in rendering judgment for plaintiff for Tract No. 1, containing 4131.66 acres of land, and Tract No. 2, containing 3813 acres of land, or any part thereof, because the undisputed evidence, consisting of field notes and patents

of the surveys involved and the other evidence introduced upon the trial of this cause, shows that the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas, includes, covers, and occupies all of said Tracts Nos. 1 and 2.

(4) The Court erred in rendering judgment for plaintiff for Tract No. 1 containing 4131.66 acres of land, and Tract No. 2, containing 3813 acres of land, or any part thereof, because the great preponderance of evidence shows that all of said tracts were included within and covered by the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas.

(5) The Court erred in rendering judgment for the plaintiff for Tract No. 1, containing 4131.66 acres of land, and Tract No. 2, containing 3813 acres of land, or any part thereof, because the undisputed evidence shows that all of the land included within said tracts was covered by and included in the Santa Rosa de Arriba grant, as confirmed by the Legislature of the State of Texas, which said confirmation included, applied to and covered all of the land included within and covered by the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas.

(6) The Court erred in rendering judgment for the plaintiff for Tract No. 1, containing 4131.66 acres of land, and Tract No. 2 containing 3813 acres of land, or any part thereof, because the great preponderance of evidence shows that all of the land included within said tracts was covered by and included in the Santa Rosa de Arriba grant, as confirmed by the Legislature of the State of Texas, which said confirmation included applied to and covered all of the land included within and covered by the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas.

15 (7) The Court erred in rendering a judgment for plaintiff for Tract No. 1 containing 4131.66 acres of land, and Tract No. 2, containing 3813 acres of land, or any part thereof, because the evidence introduced upon the trial of this cause shows that all of the land contained within said Tracts Nos. 1 and 2 was either covered by and included within the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas, and as confirmed by the State of Texas, or within Nos. 69, 70, 71, 72, 73, 76, 77, 80 and 81, in the name of G. C. & S. F. R. R. Co.

(8) The Court erred in rendering a judgment for plaintiff for Tract No. 1, containing 4131.66 acres of land, and Tract No. 2, containing 3813 acres of land, or any part thereof, because the evidence introduced upon the trial of this cause shows that the east line of the Santa Rosa de Arriba grant, as claimed by the defendants, was in 1859 fixed, established and defined by the official surveyor in accordance with the provisions of an Act of the Legislature of the State of Texas confirming said grant, passed on February 10, 1852, and that the said line as so fixed, established and defined has been repeatedly recognized by the State of Texas, and its various officers, by subsequent official surveys and by patents issued by the State of Texas to lands adjoining said eastern boundary line of said Santa Rosa de Arriba grant; and that the right and interest of the defendants herein in and to the lands included in said Tracts Nos.

1 and 2, and in and to the Santa Rosa de Arriba grant, have accrued to the said defendants and been acquired by them since the eastern boundary line of said Santa Rosa de Arriba grant was so fixed, defined and established in accordance with said Act of the Legislature of the State of Texas, and since the same has been recognized by the State of Texas by official surveys and patents to lands adjacent thereto; and that the said rights and interests of the said defendants have been acquired by them in said lands on the faith of the said official designation, establishment and delineations of said eastern boundary line of the Santa Rosa de Arriba grant, and on the
16 faith of the recognition of the same so established by the State of Texas; and that hence the said State of Texas is estopped from now denying that the said eastern boundary line of the Santa Rosa de Arriba grant, as so fixed and established and as so recognized, is not the true and correct eastern boundary line of said Santa Rosa de Arriba grant.

(9) The Court erred in not rendering a judgment for defendants for Tract No. 1, containing 4131.66 acres of land and Tract No. 2, containing 3813 acres of land, or any part thereof, because the evidence introduced upon the trial of this cause shows the Santa Rosa de Arriba grant now owned by the defendants, includes all of said Tracts 1 and 2, as the said Santa Rosa de Arriba grant was originally granted by the State of Tamaulipas, and as the boundaries of the same have been fixed, determined and established by the official surveyors of the State of Texas, and as the same have been recognized and acquiesced in by the State of Texas ever since the year 1859.

(10) The Court erred in not rendering a judgment for the defendants for all the lands included in Tract No. 1 and Tract No. 2, because the evidence introduced upon the trial of this cause shows that all of the lands covered by and included within said Tracts Nos. 1 and 2, are covered by and included within the boundaries of the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas.

(11) The Court erred in not rendering a judgment for the defendants for all of Tracts Nos. 1 and 2, because the evidence introduced upon the trial of this cause shows that all the land covered by and included in said Tract Nos. 1 and 2, is included within and covered by the Santa Rosa de Arriba grant, as its eastern boundary line was defined and established by the official surveyor in accordance with and under the provisions of the Act of the Legislature of the State of Texas, passed on February 10, 1852, and as the said eastern boundary line has been recognized and acquiesced in
17 by the State of Texas, and all of its officers, ever since the same was so established and defined in 1859 by the official surveyor in accordance with the provisions of said Act.

(12) The Court erred in rendering a judgment for plaintiff for Tract No. 3, because the evidence introduced upon the trial of this cause shows that all of the land covered by and included in said Tract No. 3 is covered by and included in the grants and surveys belonging to these defendants, to-wit: the Santa Rosa de Arriba

grant, El Tule grant, Survey No. 155, in the name of the Texas-Mexican Ry. Co., and the San Antonio del Encinal grant, and survey No. 156, Texas-Mexican Ry. Co., which is leased by the defendants from the State of Texas.

(13) The Court erred in rednering a judgment for plaintiff for Tract No. 3, because the evidence introduced upon the trial of this cause shows that all of the land included within said Tract No. 3, is covered by and included in the grants and surveys mentioned above, and that the State of Texas is not in any manner interested in nor can it in any manner be benefited by a solution of the question as to where the true division line between the Santa Rosa de Arriba grant and the grants lying to the west thereof should be properly established, since the El Tule grant, both as originally granted by the State of Tamaulipas and as confirmed and patented by the State of Texas, and the San Antonio del Encinal grant, as originally made by the State of Tamaulipas and as confirmed and patented by the State of Texas, call for the western boundary line of the Santa Rosa de Arriba grant to be the eastern boundary line of the said El Tule and San Antonio del Encinal grants; and there was no evidence introduced upon the trial of this cause which would authorize or justify the Court in finding that there was any vacant or unappropriated lands which the State of Texas was entitled to recover between the western boundary line of the Santa Rosa de Arriba and the eastern boundary lines of the said El Tule grant and San Antonio del Encinal grant; and because the field notes of surveys Nos.
155 and 156, Texas-Mexican Ry. Co., call for the western
18 boundary line of the Santa Rosa de Arriba as the eastern
boundary line of said surveys Nos. 155 and 156, and there was no evidence introduced on the trial of this cause which would authorize the Court in finding that there was any vacant or unappropriated land which the State of Texas was entitled to recover between the eastern boundary line of Surveys Nos. 155 and 156, and the western boundary line of said Santa Rosa de Arriba grant.

(14) The court erred in rendering a judgment for plaintiff for said tract No. 3, or any part thereof, because the Court should have found on the evidence introduced upon the trial of this cause, that the western boundary line of the Santa Rosa de Arriba grant and the eastern boundary lines of the El Tule grant or surveys 155 and 156, and of the San Antonio del Encinal grant were identical, and that there were no vacant or unappropriated land which the State of Texas was entitled to recover situated between the Santa Rosa de Arriba on the east and the El Tule grant, the San Antonio del Encinal grant and surveys Nos. 155 and 156 on the west.

(15) The Court erred in not rendering a judgment for the defendants for all of the land included in and covered by Tract No. 3, because the evidence introduced upon the trial of this cause shows that all of said land is included within the Santa Rosa de Arriba grant, the El Tule grant, the San Antonio del Encinal grant and survey No. 155, Texas-Mexican Ry. Co., all of which are owned by the defendants, and survey No. 156, Texas-Mexican Ry. Co., which is leased from the State by the defendants.

(16) The Court erred in not rendering a judgment for the defendants for Tract No. 3, because the evidence introduced upon the trial of this cause shows that all of said Tract No. 3 is included within and covered by the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas and as confirmed by the State of Texas by the Act of February 10, 1852.

(17) The Court erred in rendering a judgment for plaintiff for said Tract No. 3, because the evidence introduced upon the trial of this cause shows that all of the land included within said
19 Tract No. 3, is included within and covered by the Santa Rosa de Arriba grant as its boundaries were fixed, established and defined in 1859 by a resurvey thereof by the official surveyor, and as the same have been recognized and acquiesced in by the State of Texas ever since that date.

(18) The Court erred in rendering a judgment for the plaintiff for any portion of either Tracts Nos. 1, 2, and 3 mentioned and described in the judgment herein rendered, because the evidence introduced upon the trial of this cause shows that all the land covered and included in all of said Tracts Nos. 1, 2 and 3 was included within the boundaries of the Santa Rosa de Arriba grant, as the same was resurveyed by F. A. Blucher in 1859 under and in accordance with the terms and provisions of an Act of the Legislature of the State of Texas, passed February 10, 1852, the said F. A. Blucher then being the official surveyor authorized under said Act to make said survey, and that the field notes of said survey were duly returned to the General Land Office under and in accordance with the provisions of said Act of the Legislature.

(19) The Court erred in not rendering a judgment for the defendant for all of the land described in plaintiff's petition because the evidence introduced upon the trial of this cause shows that all of said land is included within Surveys Nos. 69, 70, 71, 72, 73, 76, 77, 80 and 81 in the name of the G. C. & S. F. R. R. Co., and in the Santa Rosa de Arriba grant, the San Antonio del Encinal grant, the El Tule grant, and surveys Nos. 155 and 156, in the name of the Texas-Mexican Ry. Co.

J. C. SULLIVAN.
OGDEN & BROOKS.

(Endorsed:) The State of Texas *vs.* D. R. Fant and D. Sullivan. No. 18899. Motion for New Trial. Filed Dec. 8, 1904, Jas. P. Hart, Clerk.

20 *Order on Motion.*

December 8, 1904.

18899.

THE STATE OF TEXAS
vs.
D. R. FANT and D. SULLIVAN.

On this the 8th day of Dec. 1904, came on to be heard the motion of the defendants D. R. Fant and D. Sullivan for a new trial herein, and the same having been duly considered by the Court, it is ordered by the Court that said motion be and the same is hereby overruled, to which ruling of the court said defendants D. R. Fant and D. Sullivan, excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District.

It is further ordered by the Court, upon application of the defendants, that said defendants be and they are hereby granted twenty days after the adjournment of this Court within which to prepare and file their statement of facts and bill of exception herein.

It is further ordered by the Court that the originals of all maps introduced upon the trial of this cause be sent with the record to said Court of Civil Appeals.

21 *Statement of Facts.*

Filed December 30, 1904.

In the District Court, 26th Judicial District, of Travis County, Texas.

No. 18899.

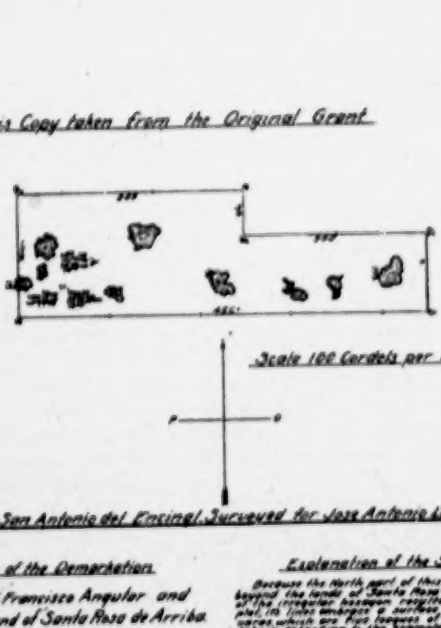
THE STATE OF TEXAS
vs.
D. R. FANT ET AL.

Be it remembered that upon the trial of the above entitled cause the following facts were proven and evidence introduced by the parties hereto.

(Explanation:) For convenience and in order to avoid repetition the documentary evidence relating to the various grants hereafter mentioned, which was introduced by both parties, will be first given, and in the stat-ment thereof will be indicated what documents were introduced by the State, what documents by both parties and what documents by the defendants relating to each grant.

(1) San Antonio del Encinal:

This Copy taken from the Original Grant



Lands of San Antonio del Encinal Surveyed for Jose Antonio Leal de Leon

Explanation of the Demarkation

a. Boundry of S. Francisco Angular and divide from land of Santa Rosa de Arriba.
b. Boundry of S. Andres Angular and also divide from land de Los Barrosos.
c. Boundry of San Antonio del Encinal.
d. Boundry of Tio Leandrito.
e. Boundry Baye situated 50 ropes North from that which follows.
f. Boundry of S. Sacramento Angular of the lands of Santa Rosa de Arriba.
h i. Motts of Oak.
m. Lake de las Piedras.
n. Lake of San Antonio del Encinal, situated north from the woods of this name.

Explanation of the Survey.

Because the north part of this land was extended beyond the lands of Santa Rosa de Arriba, the survey of the irregular bosque resulted as shown by the plat. It takes embrace a surface of 19 Labores twenty seven which are five leagues of pasture land and three labors according to the standard established by the Colonization law.

The survey was made with the certificate and as cautious as possible to the direction which the house plan contains, altho' correcting the two magnetic variation to the North East which the needles have in these lands.

The numbers thereon denote the lines and give the numbers of ropes measured on each side.

Reynosa. December 1st 1833

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(*a*) The State introduced the original grant, and translation thereof by the State of Tamaulipas to Jose Antonio Leal de Leon, made in 1833.

The grant calls for a quantity of five leagues and three labors of pasture land. The inspection recites that there is "no running or standing water and although there is on the land some lakes of sweet water which form when it rains, they are of short duration. The land is prairie, and in many places on the west part it is adorned with some live oak motts which are a relief to the stock."

The survey contains this description:

Being at the boundary of San Andres Anguilar and divides from the line of Las Barrosas. The surveyors began this measurement with a rope of fifty Mexican varas, and the surveyor having run with the compass a direct line from east to west on the south side,
22 there was measured upon it 450 ropes (22,500 varas) to the boundary of San Antonio del Encinal; from said boundary south to north on the west side there was measured 136 cords (6800 varas) to the boundary of Tio Leadreto; from this boundary west to east on the north side there was measured 250 ropes (12500 varas) to the boundary del Rayo, where it became necessary to suspend the measurement in order not to cut the lines of the Santa Rosa de Arriba, and on account of which there was measured to the south 50 ropes (2500 varas) to the boundary of Sacramento Anguilar and the aforesaid lands, and returning to take the same direction which we had from east to west was measured 200 ropes (10000 varas) to the boundary of San Francisco, also Anguilar to the aforesaid lands, and from this boundary north and south on the east side there was measured 86 ropes (4300 varas) to the boundary of San Andres where this measurement was begun. * * * This land is bounded on the east with that of Las Barrosas, on the south with that of Finados and El Realito, on the north with that of Santa Rosa de Arriba and on the west by vacant lands.

The original grant contains a plat, which is as follows:

(Here follows map marked 23.)

24 To this map the Surveyor General Antonio Canales attaches the following explanation.

Land of San Antonio del Encinal surveyed for Jose Antonio Leal de Leon. Explanation of demarkations:

A. Boundary of San Francisco Anguilar and divide from the land of Santa Rosa de Arriba.

B. Boundary of S. Andres Anguilar and also divides from the land of Las Barrosas.

C. Boundary of San Antonio del Encinal.

D. Boundary of Tio Leandrito.

E. Boundary Bago situated 50 ropes north from that which follows:

FG. Boundary of San Francisco Anguilar of the lands of Santa Rosa de Arriba.

HI. Mott of oaks.

M. Lake de las Piedras.

N. Lake of San Antonio del Encinal, situated north from the motts of this name.

Explanation of the survey: Because the north part of this land was extended upon the lands of Santa Rosa de Arriba, the survey of the irregular /exagon resulted as shown by the plat. Its lines embrace a survey of 128,000,000 square varas or five leagues of pasture land and three labors, according to the example established by the colonization laws.

This original grant was also introduced by the defendants.

(*b*) Judgment of the District Court of Travis County, rendered February 13, 1873, in the case of the Heirs of Antonio Leal de Leon *vs.* State of Texas, confirming the above grant to the heirs of Jose Antonio Leal de Leon, in which said judgment the land is described as follows:

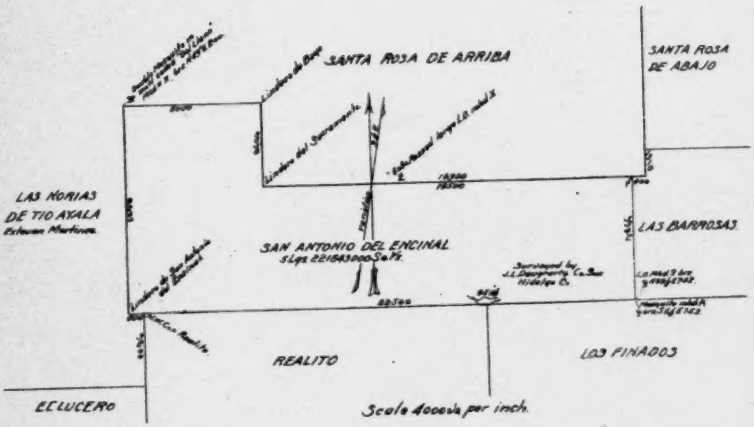
In Hidalgo County, is known as the San Antonio del Encinal.

Beginning at the southeast corner of the confirmed grant known as Santa Rosa de Arriba, being the northeast corner of this
25 grant, known as San Francisco; thence south 4300 varas to the north line of Finados, the corner known as San Andres; thence west 22500 varas to the southwest corner of this tract, known as San Antonio del Encinal, being also a corner of the tract of Estevan Martinez called Norias de Tio Ayala; thence north 6800 varas with the east line of the Estevan Martinez tract to the Northwest corner of this tract, called Tio Leondreto; thence east 12500 varas to the corner on the west line of the Santa Rosa de Arriba called El Bago; thence south 2500 varas with the west line of the Santa Rosa de Arriba to the corner called San Francisco, which is also the southwest corner of the Santa Rosa tract; thence east 10.000 varas to the place of beginning, and containing five leagues and three labors of pasture land.

A certified copy of this judgment was filed in the General Land Office September 20, 1884.

It was proven that this judgment was affirmed by the Supreme Court.

This judgment was also introduced by the defendant.



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(*c*) The defendant introduced the field notes of a resurvey of the above grant made by J. L. Dougherty, Surveyor of Hidalgo County, dated December 19, 1879, and reciting that it is made in accordance with the decree of the District Court of Travis County above mentioned and under the Act of the Legislature of the State of Texas approved August 15, 1870.

A sketch or map accompanied these field notes, which is as follows:

(Here follows map marked p. 26.)

27 The field notes of this survey read as follows:

Beginning at the northeast corner of this tract, known as the Lindero San Francisco, it being also the corner of the tract called Los Barrosas, a post and stone mound on the south line of the Santa Rosa originally granted to Pedro de la Garza; thence south with the west line of the Los Barrosas tract 5542 varas to the southeast corner of this tract and the southwest corner of said Barrosas tract, a post (with bearing trees); thence west at 6516 varas pass post and stone in Lagoona de Jarita, the northwest corner of tract called Los Finados; thence continuing west with north line of Realito tract at 21900 varas pass northwest corner of Realito, which is also corner of Estevan Martinez survey, and in all west at 22500 varas to the southwest corner of this tract and also corner of Martinez survey called Lindero de San Encinal; thence north with east line of Martinez survey 9200 varas to the northwest corner of this and the northeast corner of the Martinez survey, from which a double mesquite tree in mott called Motta del Llano marked = = bears north 49 east 200 varas; thence east 6000 varas to the west line of the Santa Rosa tract and corner on said line called Lindero de Bayo; thence south 3658 varas to the southwest corner of the Santa Rosa tract and corner of this survey known as Lindero del Sacramento; thence east with the south line of the Santa Rosa tract at 6800 varas pass large live oak marked with an old cross, at 16500 varas to the place of beginning.

This survey contains five leagues and 21,000,643 square varas of pasture land.

The above field notes and plat by Dougherty were filed in the General Land Office October 31, 1879.

(*d*) The defendants introduced in evidence the field notes of a corrected survey of the above grant, made by Andreas Salinas, District Surveyor of Hidalgo County, on September 16, 1882.

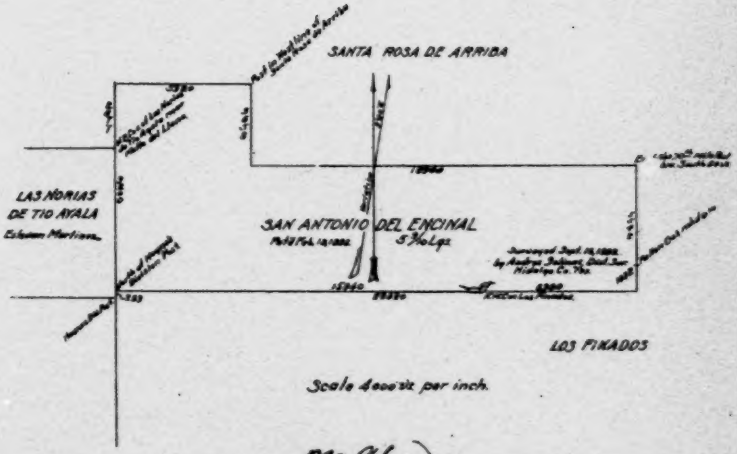
The field notes are as follows:

Beginning at the northwest corner of a grant known as Los Finados, granted to Juan N. Garza, which is a post and
28 stone; thence east at 6980 varas set post for southeast corner of this survey; thence north at 1082 varas an old fallen oak tree marked <^v> /// at 5542 varas set post for northeast corner of this survey, east of this post County line at 560 varas, from which point the 70 mile post on said line bears south 54 varas; thence west at 16900 varas set post for corner of this survey, being southwest corner of tract called Santa Rosa; thence north at 3658 varas set post on west line of Santa Rosa for corner of this survey; thence west at 5920 varas set post in prairie for northwest corner of this survey; thence south at 2877 varas to the northeast corner of tract of Los Norias de Tio Ayala, granted to Estevan Martinez, near Motta del Llano, and at 9200 varas set post on the east line of Martinez tract, which is 233 varas north of Haynes division post and corner in said tract of Tio Ayala; thence east 15840 varas to the place of beginning.

These field notes were filed in the General Land Office on the 20th day of November, 1882.

A plat accompanied these field notes, which is as follows:

(Here follows map marked p. 29.)



Scale 4000 vr per inch.

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This Map Copied from Original Grant.

Scale 75 Cordels per inch.

Tract of El Tule surveyed for D. Antonio Garcia.

The hexagonal foregoing contains within its six irregular sides, two leagues, two labors, seven hundred and fifty thousand square varas, designated with the following corners:- a-Corner of Purgatorio-b-Corner of Crusita-c-Corner of El Salto on the North bank of the creek, d-Corner of S. Antonio del Salto, an angular and dividing corner with the tract of Santa Rosa de Arriba,-e-Corner of San Rafael-g-Corner of San Vicente del Encinal, h-Lagoon of El Tule,-i-Las Olmas Creek.

This tract remained bounded on the West with that of Loma Blanca, on the East with that of Santa Rosa de Arriba and on all other sides by vacant lands.

This survey was made to the points indicated by the map, after correcting the ten degrees of variation to the North-east that the needles have in these lands

Camargo, Sept. 15, 1835. Lt. Antonio Canales.

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30 (*e*) Both the State and the defendants introduced in evidence the patent to the above grant, issued by the State of Texas on the 18th day of February 1886, and containing a description of the grant as the same is defined in the Salinas field notes above given, which are adopted by the patent in every particular.

It was admitted by the State that the defendant owned all of the above grant.

(2) El Tule:

(*a*) The State introduced the original grant, and translation thereof made by the State of Tamaulipas in 1834 to Jose Antonio Garcia.

The original denouncement describes the land as follows:

Finding a tract of land at the coast de Los Nueces, commonly called El Tule, in which I denounced in form fourteen leagues of west pasture land bounded south (?) by lands granted to Francisco Guerra and east by lands of Santa Rosa.

The inspection on the 28th day of August, 1835, is as follows:

Being at the place del Tule, I the said Judge ordered the inspection and reviewing of water of this pasture land and in doing so, associated with the surveyor and witnesses, I went to the west from where I turned in different directions until we returned to the said place del Tule. I saw that the land is prairie with some oak motts in places; that it is covered with pretty good pasturage; that it has some lakes or deposits which do not hold water for twenty days because they are very shallow and are made up of branches which conduct water when it rains, and there being no more to inspect I concluded this view of the water, and that it may be evident &*tc*.

The survey is as follows:—

On the 29th day of August, 1835, I the aforesaid judge, being at boundary of Purgatorio with the surveyor, inspectors, and computors, named and the expert of land, I ordered the survey to be started, and for the purpose a rope was measured in my pres-
31 ence of fifty varas, and the surveyor having ran a straight line from west to east on the north side the rope was stretched over same 100 times (5000 varas) to the boundary of Las Cruzita; from said boundary north and south on the east side there were measured 100 ropes (5000 varas) to the boundary of the Salto on the north bank of the creek; from this boundary east to west on the south there were measured 26 ropes (1300 varas) to the boundary of San Antonio del Salto Anguilar and divide of the land of the Santa Rosa de Arriba; from this boundary north to south on the east side there were measured 150 ropes (7500 varas) to the boundary of San Rafael; from this boundary east to west on the south side there were measured 74 ropes (3700 varas) to the boundary of San Vincente; from said boundary south to north on the west side there were measured 250 ropes (12500 varas) to the boundary of Purgatorio, where the survey was begun, by virtue of which it was concluded the surveyor declaring, that there were demarked two leagues and two labors and 750000 square varas of pasture land. Said land is bounded on the west by that of Loma Blanca, on the east by that of Santa Rosa de Arriba and on the other directions by vacant lands.

The Surveyor General Antonio Canales accompanied the report of his survey with a map or sketch of the land, which is as follows:

33 and has attached thereto the following explanation:

Land El Tule surveyed for Antonio Garcia. The foregoing hexagon comprising within its six irregular sides two leagues, two labors and 750,000 square varas demarked to the following boundaries:

A. Boundary del Purgatorio.

B. Boundary de la Cruzita.

C. Boundary del Salto on north bank of the Creek.

D. Boundary of San Antonio del Salto Anguilar and divide of the line of Santa Rosa de Arriba.

E. Boundary of San Rafael.

G. Boundary of San Vincente del Encinal.

H. Lake del Tule.

I. Los Olmos Creek.

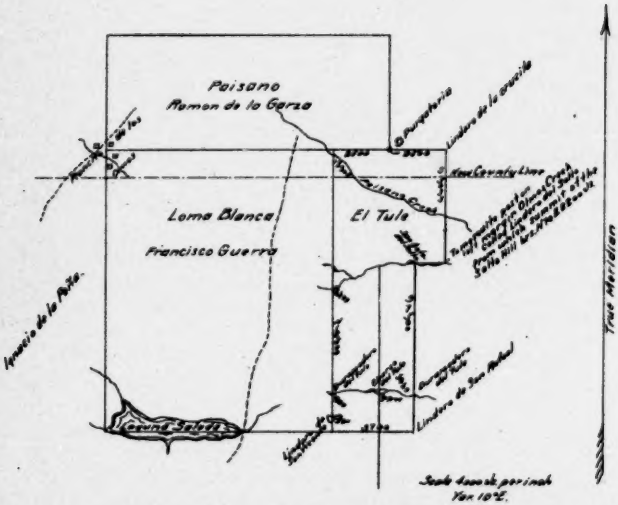
This land is bounded on the west by that of Loma Blanca, on the east by the Santa Rosa de Arriba and in the other directions by vacant lands.

The act of possession is as follows:—

At the Rancho del Tule on the 20th day of October, 1836, I the judge who is acting in these proceedings, as aforesaid, having arrived at this point with my associates and assistants, with the interested party Antonio Garcia, in the presence of the adjoining owners cited for that purpose, being at the Boundary San Antonio del Salto Anguilar and Divisario from the land of Santa Rosa de Arriba, I took the citizen Antonio Garcia by the hand and I told him in a loud and intelligent voice "Citizen Antonio Garcia, in the name of the free and sovereign State of Tamaulipas and using the powers vested in me and jurisdiction I exercise, I place you in possession of two leagues, two labors and 750,000 square varas as shown by the maps and notes preceding, which you purchased and paid to the Treasury of the State in conformity with what is stated by the Governor of this State on the 23rd day of March, 1836, and from henceforth I name you as the legitimate owner of said two leagues of pasture land the two labors and the 750,000 square varas and

34 all that is comprised within the boundaries which encircle the same as aforesaid, that he may use and enjoy the same for himself, his heirs and successors of whom his right of action should represent, because that is the will of the State," and as an acknowledgment the said Antonio Garcia gave his most expressive thanks to the Supreme Governor of the State, as also made demonstrations of dominion of property which he acquired in said lands, he irrigated, cut grass and threw dirt to the four winds and made other demonstrations of the true and legitimate ownership, telling the other citizens, "you will be witnesses that the Citizen Cayeteno Lopez, constitutional Alcalde in turn of the village of Carmargo, has placed me in possession of this land without there having been the least contradiction from any person whomsoever."

(*b*) The defendant introduced the judgment of the District Court of Travis County, rendered November 8, 1872, in the case of Jose Maria Canales *vs.* The State of Texas, confirming the above grant as against the State of Texas to the heirs of Antonio Garcia, the original grantee, in which judgment the grant is described as follows:



Plat from field notes made by Felix A. Blucher, Special deputy surveyor Nueces Dist. as surveyed October 19th and 20th 1869 and March 8th & 9th 1871.

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In the Counties of Hidalgo and Nueces, on the Olmos Creek, and known as "El Tule" and adjoining the confirmed grant known as Santa Rosa. This survey begins at its northwest corner, known as Purgatorio; thence east 5000 varas to the northeast corner, known as Cruzita; thence south 5000 varas to the corner known as the Salto, on the north bank of the Olmos Creek; thence west 1300 varas to the corner known as San Antonio del Salto, also the North corner of the Santa Rosa as the said Santa Rosa was originally surveyed and granted; thence south 7500 varas to the corner known as San Rafael; thence west 3700 varas to the corner of the San Vincente del Encinal; thence north 12500 varas to the place of beginning, and containing two leagues, two labors and 750,000 varas.

A copy of this judgment was filed in the General Land Office.

(c) Defendant introduced in evidence the field notes of a
35 survey of the above grant made by Felix A. von Blucher, Special Deputy Surveyor of Nueces District, on October 19 and 20, 1869, and March 8, 1871, which field notes were filed in the General Land Office on April 5, 1871.

These field notes contain the following description of the land:

Beginning at the southeast corner of a survey in the name of Ramon Garza, called El Paisiano, which said corner is called El Purgatorio, thence east 2500 varas to a point and stone mound in prairie for the northeast corner, called Lindero del Cruzita; thence south 5033 varas to a mesquite post and stone mound on the left margin of the Olmos Creek for the east corner, called Lindero Salto, from which the summit of the Salto Hill bears N. 70 E. 2200 varas; thence with the left margin of the Olmos Creek up stream with the following meanders (here follows meanders) to a post and stone mound on the bank of said Olmos Creek north of and opposite to the true northwest corner of a survey in the name of Pedro de la Garza and called Santa Rosa de Arriba, this corner being called Lindero de San Antonio del Salto; thence south at 30 varas cross the said Olmos Creek pass the said northwest corner of the said Pedro de la Garza survey, and with the west boundary of said survey at 5940 varas cross Dedamadero del Tule, at 7500 varas a post and stone mound in the prairie, called Lindero de San Rafael, for the southeast corner of this survey; thence west 3700 varas to the southeast corner of a survey in the name of Francisco Guerra called Loma Blanca, for the southwest corner of this survey, and called Lindero de San Vincente del Encinal, a post and stone mound from which a live oak 18 inches in diameter and marked X bears N. 2 W. 100 varas, also a live oak marked X 15 inches in diameter bears N. 16 E. 103 varas; thence north with the east boundary line of said Francisco Guerra survey at 581 varas enter lagoon, at 720 varas left lagoon, at 1800 varas cross Dedemadero del Tule, at 6400 varas the Olmos Creek runs east, at 12300 varas the Paisiano Creek runs southeast, at 12500 varas pass the northeast corner of said Francisco
36 Guerra survey for the northwest corner of this survey and intersecting the south boundary line of said survey in the name of Ramon de la Garza; thence with the south boundary of said Garza survey east 2500 varas to the place of beginning, the said survey being accompanied by a sketch of which the following is a copy:—

(Here follows map marked p. 37.)

38 (*d*) Both State and defendants introduced in evidence the patent to the above grant, issued by the State of Texas on the third day of July, 1878, containing precisely the same description as is contained in the field notes by Blucher, above mentioned.

It was admitted by the State that the defendants owned all of the above grant.

(3) Surveys 155 and 156, in the name of the Texas-Mexican Ry. Co.

(*a*) The defendant introduced in evidence the field notes of the above named surveys, made by Andres Salinas, County Surveyor of Hidalgo County, on June 15, 1882, by virtue of Land Scrip No. 225, issued to the Texas-Mexican Ry. Co.

(*b*) It was admitted by the State that the defendants owned Survey 155 and held survey 156 under a lease from the State.

(*c*) The field notes of survey No. 155, are as follows:

Beginning at a stake on the northeast corner of survey 154 by Scrip No. 224, Texas-Mexican Ry. Co.; thence north 754 varas to a stake for the northeast corner of this survey; thence east 1890 varas to the true west line of the Santa Rosa grant; thence south with said west line of the Santa Rosa de Arriba grant 1910 varas to a stake on its west line, the northeast corner of survey 156 by this Scrip, for the southeast corner thereof; thence west on the north line of survey 156, 1890 varas to a stake on the east line of survey 154, for the southwest corner hereof; thence north with said east line 1156 varas to the place of beginning.

(*d*) Field notes of survey 156 are as follows:

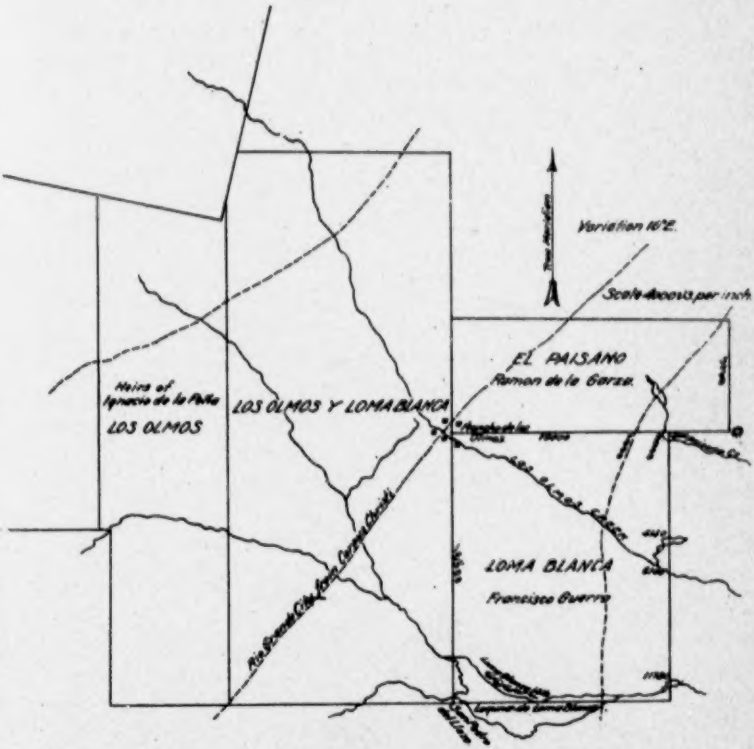
Beginning at a stake on the east line of Survey 154, Scrip 224, Texas-Mexican Ry. Co., the southwest corner of Survey 155, by this Scrip, for the northwest corner of this survey; thence south 177 varas pass the southeast corner of said survey 154, and at 1900 varas to the southeast corner of survey 153, on the north boundary line of the San Antonio del Encinal grant, for the southwest corner hereof; thence east 1890 varas to post and northeast corner
39 of the San Antonio del Encinal for the southeast corner of this survey; thence north with the west line of the Santa Rosa de Arriba grant 1910 varas to stake, southeast corner of survey 155 by this Scrip, for the northeast corner hereof; thence west 1890 varas to its beginning.

(4) Loma Blanca:

(*a*) The defendants introduced in evidence the field notes of a resurvey of the above grant by the State of Tamaulipas, dated on the 19th day of December, 1831, to Francisco Guerra, by John E. Martin Special Surveyor of Starr County, made March 9, 1870. The original grant made by the State of Tamaulipas on the 19th day of December 1831, is lost. The above field notes of the resurvey were made under confirmation by the State of Texas.

These field notes are accompanied by the following plat:

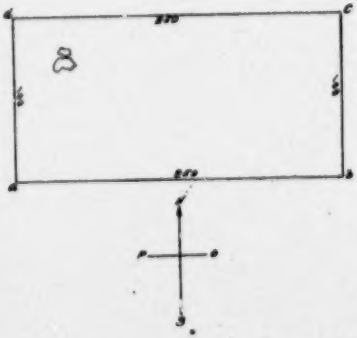
(Here follows map marked p. 40.)



Plat of Loma Blanca - Francisco Guerra - as surveyed by J.E. Martin,
Special Surveyor of Starr County, Texas, March 08, 1972.

No. 91
Sullivan
Texas

$40



Map taken from certified copy of Original Paisano Grant - D. Ramon de la Garza
The foregoing rectangle comprises, within its four angular points, two and one half leagues of pasture land demarked with the following boundaries :- a-Corner of the Tampacuas, b-Corner of Purgatorio, c-Corner of the Alicon, d-Corner of the Puerto, e-Corner of the Laguna del Paisano. This land remains bounding on the West by that of Ygnacio Pena; on the South by that of Francisco Guerra and in the other directions by vacant lands. The survey was made in the direction which the plat indicates after correcting the ten degrees variation to the N.E. which the needles have in these lands.

Camargo, Sept 15th 1835. Lic Antonio Canales.

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Sullivan } p. 142
Texas.

41 The field notes describe the southeast corner of this grant as being at the southeast corner of the grant called Los Olmos del Loma Blanca, and as being a stone block in the south margin of the western extremity of the Lagoona de Loma Blanca, placed there as the beginning corner by the Surveyor General of the State of Tamaulipas in the year 1831, and designated as the Lindero San Pedro del Lleso, from which a mesquite marked X bears N. 40 W. 17 varas.

The field notes call to run north to the southwest corner of a survey in the name of Ramon de la Garza and called El Paisano for the northwest corner of this survey; thence the field notes run east 10,000 varas; thence south 6100 varas crossing Olmos Creek at a place called Barranco Blanco, and continuing south 12500 varas to the southeast corner; and thence west 10,000 varas to the place of beginning.

(*b*) It was agreed by the parties that a patent was issued by the State of Texas to the Loma Blanca grant on the above field notes, and it was also agreed that the defendants are the owners of the eastern portion of the Loma Blanca grant.

(5) El Paisano:

(*a*) The defendant introduced the original grant, and the translation thereof, made by the State of Tamaulipas to Ramon de la Garza in 1836, for two and one half leagues of pasture land known as El Paisano.

The Survey was made by the Surveyor General, Antonio Canales, who incorporates in the grant a plot which is as follows:

(Here follows map marked p. 42.)

43 There accompanies same the following explanation:

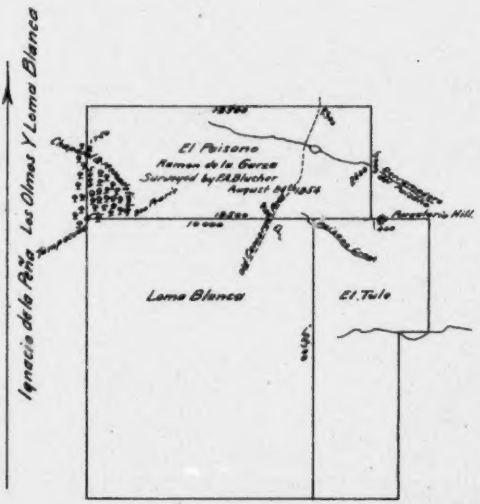
The foregoing rectangle comprising its four irregular bounds two and one half leagues of pasture land, demarked with the boundaries as follows:

A. Corner of Tampacuash.
B. Corner of Purgatorio.
C. Corner of Alcon.
D. Corner of Puerto.
G. Corner of Lagoona del Paisano.

This land being bounded on the west by that of Ignacio Pena, on the south by that of Francisco Guerra and on the other directions by vacant lands.

(*b*) The defendants introduced a survey of the above grant by Felix A. Blucher, Surveyor of Nueces District, on the 9th day of September, 1854, accompanied by a plot, which is as follows:

(Here follows map marked p. 44.)



I, Felix A. Blucher - Surveyor for District of Nueces do solemnly swear that the survey designated in the foregoing plat and field notes was made by me on the 23rd & 24th days of August A.D. 1854 and that the lines, boundaries and corners of the same together with the marks natural and artificial are truly designated therein. Witness my hand at Corpus Christi, this 9th day of September A.D. 1854.

Felix A. Blucher, Surveyor Nueces District.

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Texas.

Var. 9°30' E Scale 4 chains per inch.

Surveyed April 20th 1869

Jos. F. Fulton, Co. Surveyor

Hidalgo Co, Texas.

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Texas

45 The field notes are as follows:—

Beginning at the northwest corner of a five league survey made for Francisco Guerra, called Loma Blanca, the corner called del Tampacuash, a post (with bearing trees) for the southwest corner of this survey; thence east through the mesquite timber at 2000 varas enter prairie, at 8100 varas cross old Carmargo road going southwest, at 12500 varas set post for the southeast corner, from which the top of the hill called Purgatorio bears east 400 varas; thence north at 2400 varas cross Derramadero del Paisano, running east at 5000 varas set post for northeast corner; thence west at 2300 varas cross Carmargo road, bearing southwest at 12500 varas set post for the northwest corner; thence south at 1750 varas enter chaparral and mesquite timber, at 5000 varas place of beginning.

A patent was issued by the State of Texas on the above field notes.

(6) James Forrester Survey No. 5.

(*a*) The defendants introduced the field notes of the James Forrester Survey made by Julius F. Fulton, Surveyor of Hidalgo County, April 20, 1869, by virtue of a headright certificate issued to John F. Parker, Assignee of James Forrester, which are as follows:

Beginning at a post on the west boundary line of a survey in the name of Pedro de la Garza and called Santa Rosa de Arriba, 4800 varas south of its northwest corner, for the northeast corner of this survey, from which a live oak marked A bears S. 45° W. 100 varas, also a mesquite marked W bears S. 87° E. 178 varas thence west at 2100 varas enter Zachuistle flat, at 3050 varas left same, at 3535.50 varas set post for northwest corner; thence south at 100 varas enter lagoon, at 200 varas left same, at 998 varas enter Encinal timber, at 1309 varas marked line tree, at 2580 varas marked line tree, at 2535.50 varas set post for the southwest corner, from which a live oak marked 8 bears N. 21° E. 160 varas, also a live oak marked W. bears N. 29° E. 175 varas; thence east through live oak tim-

46 ber 3535.50 varas to a post for the southeast corner, intersecting the west boundary line of said surveys in the name of Pedro de la Garza; thence north with the west line of said Garza survey at 2936 varas pass the western extremity of the Charco del Tule, at 3535.50 varas reach the place of beginning.

(Here follows map marked p. 47.)

48 These field notes were filed in the General Land Office June 10, 1869, and the endorsements thereon show that they were cancelled by correct fi*l*ed notes, upon which patent was issued and which are not material to this case.

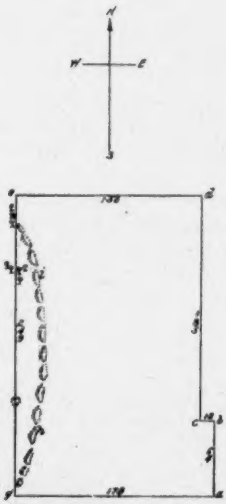
(7) Las Norias de Tio Ayala.

(*a*) Defendants introduced the original grant, and translation thereof, from the State of Tamaulipas to Jose Estevan Martinez, made in 1835, for four leagues and 630,000 square varas of pasture land. Survey made by Surveyor General Antonio Canales.

The inspection recites that on the 22nd day of August 1835, "being on the ground at the point Los Noriesitas, I said judge, commanded that the examination and inspection of said tract of land should proceed, and in compliance therewith, in company with the surveyor and my assisting witnesses, I proceeded to the west and from which place I made a circuit of all the boundaries until I returned to said point of Los Noriesitas, and I found that said tract of land was a place with some motts of live oaks, having very good pasturage and some small lagoons or tanks which catch water but they do not retain it more than fifteen days.

The surveyor general includes in the grant a sketch thereof, which is as follows:

(Here follows map marked p. 49.)



Tract of Las Norias de Tio Ayala of Dn Estevan Martinez.

The foregoing hexagonal contains within its six irregular sides, four leagues and six hundred and thirty thousand square varas of pasture land, designated with the corners as follows:- a-Corner La Vibora, b-Corner of Escondedo Angular, c-Corner of Dn Antonio Leal, d-Corner of La Mota del Llano, e-Corner of Pajarito, g-corner of El Cerrito, h, i,- the hills of Las Norias, The tract is bounded on the South with that of El Lucero, on the East with that of Realito and that of Dn Antonio Leal and on all other sides by Vacant lands. The survey was made to the points indicated in the map after correcting the ten degrees of variation to the N.E. that the needle has in these lands.

Camargo, Sept. 15th 1885

Lu Antonio Canales.

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} p. 49

and accompanies the same by the following explanations:

The foregoing hexagon contains within its six irregular sides four leagues and 630,000 square varas of pasture lands, designated with the boundaries as follows:

A. Boundary of La Vibora.
B. Boundary line of Escondido Anguilar of the pasture of Relitos.
C. Boundary line of Don Antonio Leal.
D. Boundary line of Motta del Llano.
E. Boundary line of Pajarito.
G. Boundary line El Cerrito.
HI. The hills of Las Norias.

The tract is bounded on the south by that of El Lucero, on the east by that of El Relito and that of Don Antonio Leal, and on all the other sides by vacant lands. The survey was made on the place indicated on the map after correcting the ten degrees of variation.

(*b*) Defendants introduced in evidence the field notes of a resurvey of the above grant, made by J. C. Eivet, Deputy District Surveyor, of Hidalgo and Cameron Counties Districts, on the 17, 18 and 19th days of January, 1876, which recites that it is made for the heirs and legal assigns of Estevan Martinez, to whom the same was originally granted by the Mexican Government, and to whom the same was confirmed by the decree of the District Court of Travis County, under the act of the Legislature of the State of Texas approved August 15, 1870, the said tract being known as Las Norias de Tio Ayala.

The field notes are as follows:

Beginning at the original southwest corner of this survey, which is also the northwest corner of El Lucero, originally granted to Antonio Elizondo, which corner is known as El Clarita, thence north at 2124 varas reach base line of sand hills, at 2832 varas pass small pond, at 4286 varas cross high hill known as El Lucero at 6847 varas enter woods, at 11375 varas struck open prairie, at 12400 varas to the original northwest corner of this survey, situated in an open place and called in the original map and field notes El Lindero Pargito; thence east through open prairie on north line of this tract at 5862 varas enter pond, at 8300 varas to the northeast corner of survey known as Lindero de la Motta del Llano, the eastern end of this mott bears from corner N. 49° E. 200 varas; thence south on west line of tract known as San Antonio del Encinal, originally granted to Antonio Leal de Leon, at 5000 varas live oak marked I L on the line, at 9200 varas to an original corner called the corner of Antonio Leal, being also the southwest corner of the San Antonio del Encinal tract and situated in the open prairie; thence east with south line of the San Antonio del Encinal tract 600 varas to an original corner being the northwest corner of the Realitos tract originally granted to Manuel de la Garza and called in the original map and field notes Escondido Anguilar and situated in open prairie thence south with west line of Realitos 32000 varas to an original corner called Lindero de la Vibora, from which a live oak tree marked X ||| bears magnetic south 45° east 106 varas, being also the northeast corner of the El Lucero grant; thence west with

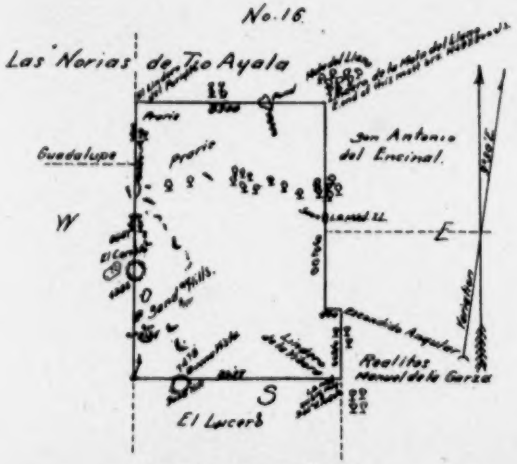
the north line of El Lucero through live oak motts at 7478 varas cross sand hills called Buena Vista, and at 8937 varas to the southwest corner of this survey, being the place of beginning.

(c) Defendants introduced in evidence patent issued by the State of Texas to the above grant, dated March 25, 1876, for the following field notes:

Beginning at the original northeast corner of this survey, known as La Vibora, and the original northeast corner of tract known as El Lucero granted to Antonio Elizondo; thence north 3200 varas to an original corner near mott of live oak timber a live oak bears N. 44° E. 120 varas; thence west 600 varas to an original corner called the corner of Antonio Leal, also the original southwest corner of a tract called San Antonio del Encinal granted to said Antonio Leal, a live oak marked X || bears due west 200 varas; thence
52 north with the west line of the Leal tract at 3100 varas pass division corner of this tract, at 9250 varas reach the original northeast corner of this tract known as Motta del Llano, being a mott of live oaks in the prairie and bearing north about 300 varas; thence west 8300 varas to original northwest corner of this tract known as El Pajarito in open prairie; thence south at 8113 varas cross sand hills, at 12,400 varas the original southwest corner of this tract and northwest corner of Lucero tract known as El Cerito, live oak bears N. 57° E. 118 varas; thence east with north line of Lucero tract 8900 varas to the beginning.

(Here follows map marked p. 53.)

No. 16.



Scale 4000 varas per inch.

Surveyed by J.C. Eiret Deputy District Surveyor, January 18th & 19th
Certified to by John McAllen District Surveyor Hidalgo and Cameron Counties, Texas.
January 21, 1876.

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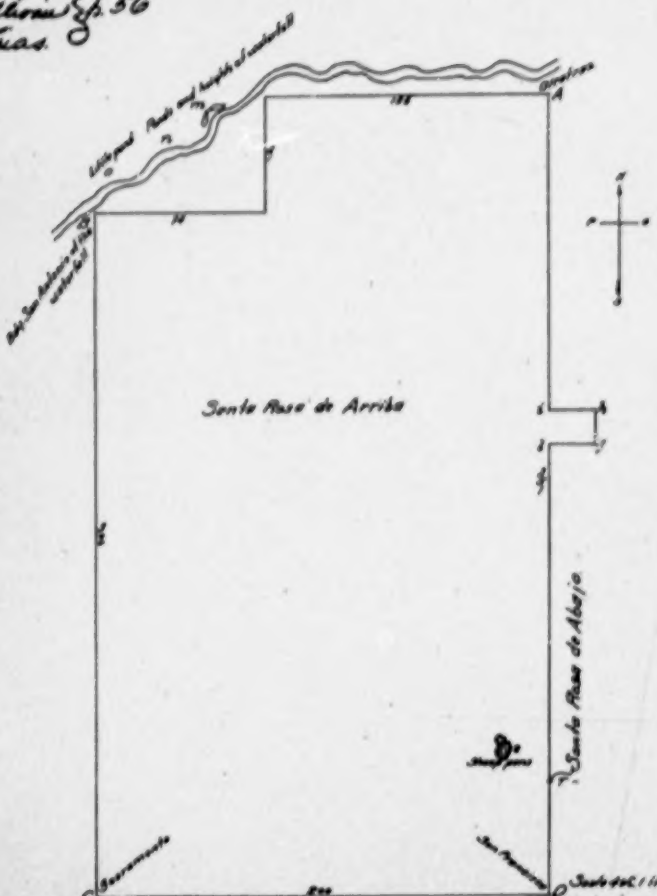
No. 91.
Cullhorn Sp. 56
Texas.



The inclination to the South east of the Olmos Creek figured in the survey of the irregular hexagon which appears depicted, which contains Six leagues of pasture land for large cattle and 20,102,560 sq. vs. according to the units fixed by Law of the State for agrarian measures. The angular boundaries and most noted places which were defined were the following, A - bdy of the Alcatraz, B - bdy of San Antonio at the waterfall C - bdy of Sacramento, D - bdy of San Francisco, r - lateral bdy of this pasture and angular of Santa Rosa de Abajo called San Pedro, a - Lake of the Sheep pens and m, m, ponds and heights at the waterfall, o - the little pond. The rectangle R.S.Q.I - was ceded to this pasture by citizen Pedro Villareal of which it was defined in the terms which appear in the file of this survey A.M.B - the Olmos Creek. This pasture is bounded on the North by the creek, East by the pastured Possession and on the West by vacant lands.

Camargo, December 6th 1832. - Antonio Canales.

54 (8) Santa Rosa de Arriba:

(*a*) Both the State and the defendants introduced the original grant, and translation thereof, made by the State of Tamaulipas to Pedro de la Garza in the year 1832:

Second Seal Twelve Reals.

For the Years 1831 and 1832.

The Citizens, Francisco Vital Fernandez, Constitutional Governor of the Free and Sovereign State of Tamaulipas—In as much as the citizen Pedro de la Garza, resident of the town of Carmargo denounced six leagues of pasture land for large cattle in the place Santa Rosa on the coast of Santa Gertrudis whose jurisdiction has not yet been assigned to any one of the frontier towns and the necessary proceedings have been had as directed by the Colonization law as appears by the file of documents formed for that purpose and which are filed in the Archives of this government he having paid to the revenue of the State the two hundred and four dollars at which they were appraised: I have completed two adjudicate and concede to the said citizen Pedro de la Garza the above mentioned six and a half leagues of pasture land for large cattle comprehended in the boundaries, angles and demarkations, which appear in the attached map countersigned with the seal of this Government signed with a rubric by my Secretary, which for greater distinctness are set out in the present title in the following mode; El Alcatraz and San Antonio of the Waterfall east to west on the north side; San Antonio and the Sacramento North to South on the west; Sacremento and San Francisco West to East on the South; San Francisco, San Pedro and El Alcatraz South to North on the East. The pasture land is bounded on the North by Los Olmos Creek and on the rest of the sides by vacant lands.—In virtue of which I confer upon the interested party full dominion and ownership in them for him, his children and successors and command all the authorities and
55 inhabitants of the State to have, take and recognize the said Citizen Garza as the legitimate landlord and owner of the aforesaid leagues of pasture for large cattle which were granted him; and for that purpose the Alcalde of Carmargo will put the interested party in possession of land with previous citation to the adjoining owners, noting as well at the foot of this title for due proof and preserving in the archives of his court a certified copy of the act of possession which he may send up—Given in the City of Victoria, capitol of the State of Tamaulipas on the third day of the month of July one thousand eight hundred and thirty four; the eleventh of the installatuo of the Congress of the State.

FRANCISCO VITAL FERNANDEZ.
G. ARCOS, *Chief Officer.*

In the town of Carmargo on the second day of the month of December, 1834.

Map of the pasture land of Santa Rosa de Arriba surveyed for the citizen Pedro de la Garza.

(Here follows map marked p. 56.)

57 The inclination to the south east of the Olmos Creek figured in the survey of the irregular hexigon which appears depicted, which contains six leagues of pasture land for large cattle and 20,782,500 square varas according to the units fixed by the law of the State for agrarian measures. The angular boundaries and most notable places which were defined were the following: A. boundary of the Alcatraz, B. boundary of San Antonio of the Waterfall; C. boundary of Sacramento; D. boundary of San Francisco; r lateral boundary of this pasture and angular of the *of* Santa Rosa de Abajo called San Pedro; e lake of the Sheep pen; m n ponds and heights of the waterfall; o the little pond. The rectangle h, i, g, l, was ceded to this pasture by citizen Pedro Villareal of which it was defined in the terms which appear in the file of this survey, A. M. B., the Olmos Creek. The survey was made with the greatest exactness remeasuring the cord every half league and correcting the ten leagues of declination to the northeast which the compass needle has in these lands. This pasture is bounded on the north by the Creek, on the east by the pasture of Paistle and on the rest by vacant lands.

Carmargo Dec. 5th, 1832.

ANTONIO CANALES.

I, the citizen Jose Manuel de Chapa constitutional Alcalde in it and its jurisdiction, the citizen Pedro de la Garza of this vicinity having presented himself before me individually with the title of the Supreme Government of this State in which it appears that he has surveyed and paid into the treasury of the same State six and a half leagues of pasture land for large cattle in the place Santa Rosa and he requested and supplicated me that he having acquired said six and a half leagues of pasture land with a legal and just title that I should go to give him judicial possession of them citing his adjoining owners to take it, and I the said judge considering the petition of the above mentioned Garza decided upon my departure this day of the date and as judge who acts as delegate judge I took two witnesses of assistance and they are those who subscribe this
58 title with me said judge, thus I decided with submission to the law of all of which I give faith.

JOSE MANUEL DE CHAPA,
Of Assistance.
JOSE ANTONIO CONTRERAS,
Of Assistance.
JOSE ANTONIO FALCON.

In the same town said day, month and year I the within written judge in fullfilment of the foregoing decree determined my departure at ten o'clock in the morning of this day, and citation was made to the adjoining owners, and for its proof I place the direction which I sign with a rubric—In the place of Santa Rosa on the 6th day of the month of Dec., one thousand, eight hundred and thirty four, I the citizen Jose Manuel de Chapa 1st. Constitutional Alcalde of the town of Carmargo and its jurisdiction being in the aforesaid place associated with the citizen Pedro de la Garza I took

him by the hand and leading him over the said place told him in loud and intelligible voices—citizen Pedro de la Garza in the name of the Free and Sovereign people of Tamaulipas and in use of the powers which reside in me I put you in judicial possession of six leagues of pasture land for large cattle, which you have purchased and paid in the treasury of the State and in conformity with which is directed by his Excellency the Governor on the date of the third of July of this present year; and from now on forever I name you the legitimate owner and landlord in proprietorship of the aforesaid six and a half leagues and all that is contained in them under the boundaries which surround it and are the same which appear in the survey, said six leagues being bounded on the north by the Olmos Creek, on the east by lands surveyed to the citizens Pedro Villareal, resident of Reynosa, and Irino Gomez resident of Matamoras, and on the rest of the sides by vacant lands. The same corner marks serving for all the — which you must form of masonry visable and durable within the parentory term of four months counted from this date with understanding that if you do not do so you will be disposed and lose the right seignory, domicile and ownership which you have to said six leagues as directed by the laws relative to this business to obviate prejudice and contradictions, and in acknowledgement the aforesaid citizen Pedro de la Garza gave the
59 most appreciative thanks to the Supreme Government of the State, and in demonstration of the dominion and ownership which he has acquired in said lands sprinkled water, cut grass, pulled up herbs and threw them to the four winds saying to the bystanders, Citizens you will be my witnesses that the citizen Jose Manuel de Chapa 1st. Constitutional Alcalde of the town of Carmargo and its jurisdictions has put me in judicial possession of six and a half leagues of pasture land of large cattle without there having been the slightest opposition on the part of any one. With which the present judicial act was concluded in the aforesaid place signing with me the said judge and those of my assistance with whom I act for the lack of a Notary Public of which there is none according to law I give faith.

JOSE MANUEL DE CHAPA.
PEDRO DE LA GARZA,
Of Assistance.
JOSE ANTONIO CONTRERAS,
Of Assistance.
JOSE ANTONIO FALCON.

(*b*) The State and defendant introduced in evidence the confirmation of this grant by the Legislature of the State of Texas by the Act of February 10, 1852, which reads as follows:—

(103) Pedro de la Garza, 6½ leagues called Santa Rosa, and Alexandro Farias, 4½ leagues called San Jose.

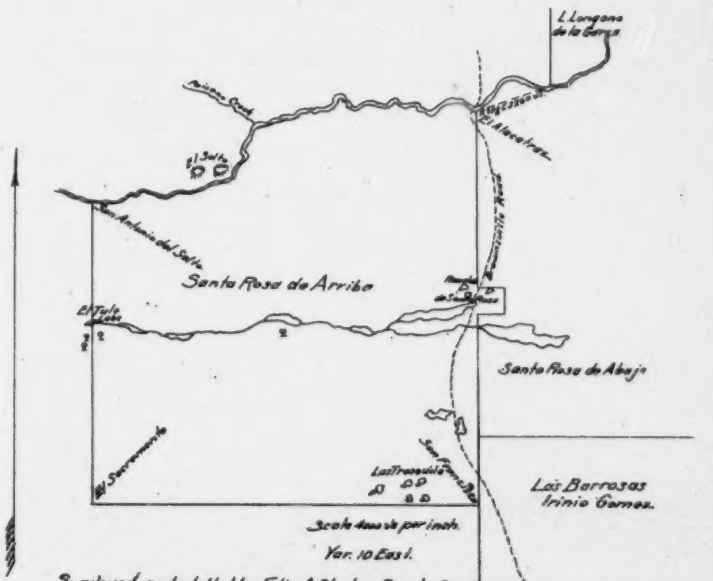
Also the provisions of the same Act read as follows:

SECTION 2. That it shall be the duty of those claiming any of the land named in this Act to have the same surveyed by the District or County Surveyor of the County in which the same may be located,

and upon the return of the field notes thereof to the General Land Office, the Commissioner is hereby authorized and required to have the same platted on the maps in his office, and issue patents to the same in accordance with the existing laws, and provided no patents shall issue for a less amount than the original grant. That the owners of said land shall be required to pay the taxes due on the same from the date of the organization of the respective counties herein mentioned, which taxes shall be paid and the legal vouchers for the same exhibited to the Commissioners of the General Land Office before the patent to same shall issue.

60 (*c*) Both the State and the defendants introduced the field notes of a survey of the above grant made by F. A. von Blucher, deputy District Surveyor of Cameron District, on May 24, 25, 26, 27, 28, and 29, 1859, filed in the General Land Office August 5, 1869, together with the map or sketch accompanying the same, which are as follows:

(Here follows map marked p. 61.)



Surveyed and plotted by Felix A. Blucher, Deputy Surveyor for Cameron District, May 24th, 25th, 26th, 27th, 28th & 29, 1859.
Recorded in Book E, page 28 & 29, Cameron County, Texas.

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62 THE STATE OF TEXAS, *District of Cameron:*

Survey No. 1.

Field notes of a survey of Eight leagues and twelve labors of land made for Wm. G. Hale and F. J. Parker the assignees of Pedro de la Garza this being the quantity of land to which they are entitled by virtue of a grant from the State of Tamaulipas dated on the 3rd day of July A. D. 1834. Surveyed in accordance with an act of the Legislature of the State of Texas, approved Feb'y 10th, 1852 and entitled "An act to relinquish the right of the state to certain lands therein named this being part of confirmation numbered 103 for County of Starr in said Act.

Said survey is No. 1, fronting on the right margin of the Olmos Creek, situated in Hidalgo County about ninety miles northwest of Brownsville and is called "Santa Rosa"—Beginning at a post and mound of stones on the right margin of the Olmos Creek about 100 varas below the crossing of the road leading from San Patricio to Brownsville for the north east corner designated in the original title as Lindero del Alcatras from which a mesquite marked X bears west 100 varas and from which the southwest corner of a survey in the name of Leonards Lengoria de la Garza called El Rincon del Grullo bears north 75½ East 3260 varas; thence south at 660 varas crossed Brownsville road bearing S. by E. at 7700 varas the said road runs S. S. W. at 8000 varas set post in mound; thence east 1200 varas to a post in mound; thence south 1200 varas to a post from which a mesquite marked X bears N. 30° E. 5 varas; thence west 1200 varas to a post from which a mesquite marked X bears North 22½ west 49 varas; thence south at 430 varas entered Lagoon at 550 varas left Lagoon at 1840 varas marked oak for line tree at 4950 varas marked ..... oak 2 varas to the west at 7400 varas crossed

63 the said Brownsville road running South by east at 8400 varas Set post in mound for the South east corner designated in the Original title as "Lindero de San Francisco" from which a live oak in a mott marked XX bears S. 58° E. 606 varas. Thence West at 10420 varas original line tree in mott at 16900 varas set post for the south west corner designated in the original title as "Lindero del Sacramento." Thence north at 4300 varas entered Encinal timber at 8360 varas passed between two large Live Oaks bearing marked of the Original survey at the western end of the Charco del Tule at 13760 varas a stone mound on the southern margin of the Olmas Creek for the north west corner designated in the original title as "Lindero de San Antonio del Salto" from which a mesquite on the northern margin of the said creek bears N. 27½ E. Thence with the right margin of the said Olmas Creek and its meanders down stream North 80° East 160 varas S. 84° E. 480 vrs. S. 56° E. 468 vrs. S. 87° E. 142 vrs. N. 87° E. 142 vrs. N. 46° E. 715 vrs. N. 74° E. 145 vrs. S. 47½° E. 172 vrs. S. 87° E. 180 vrs. N. 48½° W. 197 vrs. S. 86½° E. 120 vrs. S. 52½° E. 180 vrs. N. 55° E. 115 vrs. N. 73° E. 310 vrs. S. 80° E. 168 vrs. S. 48½° E. 300 vrs. S. 77° E. 125 vrs. N. 61½ E. 140 vrs. N. 36° E.

100 vrs. N. 57° E. 252 vrs. S. 55½° E. 214 vrs. S. 81½° E. 340 vrs. N. 76½° E. 484 vrs. S. 52½° E. 136 vrs. N. 76¾ E. 285 vrs. N. 43½° E. 160 vrs. N. 18½° E. 205 vrs. S. 69° E. 325 vrs. N. 74½° E. 100 vrs. N. 66° 120 vrs. N. 29° E. 370 vrs. S. 61½° E. 135 vrs. S. 36° E. 336 vrs. N. 57° E. 275 vrs. N. 3° E. 120 vrs. N. 13½° W. 508 vrs. N. 49° E. 111 vrs. East 255 vrs. N. 42½° E. 295 vrs. N. 8½° W. 215 vrs. N. 51½° W. 319 vrs. N. 76° E. 243 vrs. N. 29° E. 610 vrs. N. 10° E. 635 vrs. S. 80° E. 70 vrs. S. 64° E. 300 vrs. N. 72½° E. 507 vrs. N. 47½° E. 379 vrs. S. 83° E. 660 vrs. N. 65° E. 280 vrs. N. 14° E. 88 vrs. N. 24½° E. 310 vrs. S. 74½° E. 384 vrs. S. 87½° E. 698 vrs. S. 66 E. 140 vrs. N. 32 E. 169 vrs. N. 15° E. 482 vrs. N. 47½° E. 112 vrs. N. 83 E. 100 vrs. S. 40° E. 183 vrs. S. 12° E. 240 vrs. S. 14° W. 129 vrs. S.
64 31½° E. 297 vrs. S. 89° E. 430 vrs. N. 54½° E. 236 vrs. N. 46° E. 260 vrs. S. 88½ E. 360 vrs. S. 63° E. 242 vrs. S. 20° E. 152 vrs. S. 83½° E. 280 vrs. N. 44° E. 730 vrs. S. 28° E. 263 vrs. S. 17° E. 267 vrs. N. 76½° E. 276 vrs. N. 65° E. 460 vrs. S. 25½° E. 182 vrs. S. 10½° E. 192 vrs. S. 48° E. 340 vrs. S. 74° E. 180 vrs. N. 52½° E. 355 vrs; N. 53½° E. 167 vrs. N. 33½° E. 540 vrs. N. 74° E. 159 vrs. N. 86° E. 400 vrs. N. 83° E. 228 vrs. S. 31° E. 60 vrs. S. 26½° E. 100 vrs. S. 75° E. 218 varas to the Brownsville road and east 100 varas to the place of beginning.

Surveyed May 24th, 25th, 26th, 27th, 28th & 29th, A. D. 1859.

FELIX A. BLUCHER,
NASSORIO OLQUIN,
NARCISO PAZ,
Chain Carriers.

I, Felix A. Blucher, Deputy Surveyor for Cameron District do hereby certify that the foregoing survey was made according to law and that the boundaries, limits and corners with the marks natural and artificial are truly described in the foregoing Plat and field notes.

FELIX A. BLUCHER,
Deputy Surveyor, Cameron Dist.

I, Felix A. Blucher District Surveyor for Cameron District do hereby certify that I have examined the foregoing plat and field notes and find them correct and that the same are recorded in my office in Book E. pages 28 & 29.

Given under my hand at the City of Brownsville on this the 29th day of April A. D. 1861.

FILIX A. BLUCHER,
District Surveyor, Cameron District.

File 545 San Partricio 1st Class.
Field notes 8 Leagues.

PEDRO DE LA GARZA.

Filed Aug. 5, 1869.

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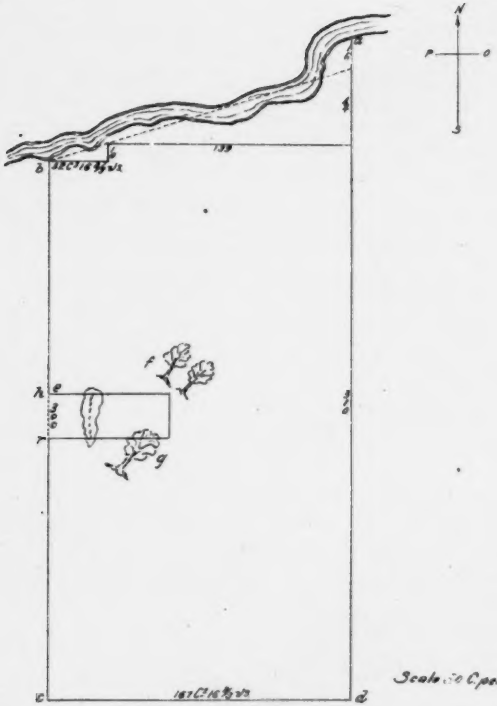


The inclination of the Olmos Creek is SW 9 degrees resulting in the Hexagon and Rectangle Triangle adjacent, as shewn drown on the above map, enclosing in one area the five and a half leagues of pasture lands according to the basis established by the law of the State. The angular corners and most noted places of this land are the following:- a - Corner of Mirasol, b - Corner of Alcatraz, c - Corner of San Pedro, d - Corner of San Lucus, e, f, g - mott and lakes of Santa Rosa. The rectangle h, p, q, r, was ceeded by the citizen, Pedro Villareal on the terms as shown in the copy of title. The land is bounded East by that of Paistle on the North by the Olmos Creek and in the other directions by vacant lands.

Camargo, December, 21st 1833.

Antonio Canales

65 It appears according to Antonio Garza Field Notes 1-556 that these field notes are correct, but not returned yet. April 6/71 M. Stakeman, confirmed for 6½ Leagues.

Closes partly all but the approximate area found with apportioning errors is 267, 552, 959, sq. vrs.—10 Leagues 17½ Labores or 55, 252, 959 sq. vrs. too much. Aug. 21, '69, Richardson, $2.00

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *April 13th,* 1904.

I, John J. Terrell, Commissioner of the General Land Office of the State of Texas, do hereby Certify that the above and foregoing is a true and correct copy of the original, together with all endorsements thereon, now — file in this office.

In testimony whereof, I hereunto set my hand, and affix the impress of the seal of said office the date last above written.

[SEAL.] JOHN J. TERRELL,
Commissioner General Land Office.

66 (9) Santa Rosa de Abajo:

(*a*) The defendants introduced in evidence the original grant by the State of Tamaulipas to Pedro Villareal for five and one half leagues of land, survey made by Antonio Canales in 1833, said survey with map with explanation is as follows:—

(Here follows map marked p. 67.)

68 The inclination of the Olmos Creek is Southwest 9, resulting in a hexagon and rec. ang. adjacent, as shown drawn on the above map including in one area the five and one half leagues of pasture land according to the laws of the State. The angular corners and most noted places of this land are the following:—

A. Corner of Mirasoles.
B. Corner of Alcatraz.
C. Corner of San Pedro.
D. Corner of San Lucas.
E F G. Mott and Lake of Santa Rosa.

The rect. ang. hpgr. was ceded by the citizen Pedro Villareal on the terms as shown in the copy of title.

The survey was made with exac-tude with 10 variation to the northeast which the needle in these lands has.

The land is bounded east by that of the Paistle, on the north by the Olmos Creek, and in the other directions by vacant lands.

Carmargo, December 21, 1833.

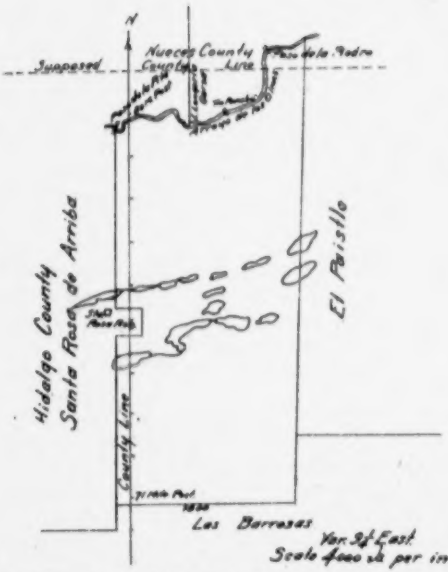
ANTONIO CANALES.

What purports to be the final title to this grant was issued by the Government of Tamaulipas on the 12th day of April, 1848, and recites that Pedro Villareal had paid into the Treasury of the State on the 8th day of January, 1833, $165.00, being the appraised value of the five and one half leagues of pasture land, which were measured and demarked for him in Santa Rosa de Abajo by the Surveyor General Lic Antonio Canales, in 1832, and recites that the lands are bounded on the east by the lands of the Paistle on the north by the Olmos Creek and on the other sides by vacant lands.

The document introduced showing the original of the above grant was a certified copy from the Records of Deeds of Cameron County, which shows that the original of the recorded instrument was filed for record at 12 m. August 8, 1879, and was duly recorded on the same day.

(*b*) The defendants introduced in evidence the field notes
69 of a survey of the above grant made by J. J. Cocke, Surveyor of Cameron County, on November 28, 1879, reciting that the same was surveyed for the heirs and assigns of Pedro Villareal, to whom the lands were originally granted by the State of Tamaulipas and surveyed by Antonio Canales, the original map and field notes being dated December 21, 1832, and recorded in the Clerk's office of Cameron County, in Book E, pages 243-244, said field notes containing the following metes and bounds:—

Beginning at the southwest corner of a survey made in the name of J. A. Balli, called El Paistle, as surveyed by F. A. Blucher in 1869, a post from which a live oak 18 inches in diameter *b*arked X bears S. 61½ E. 215 varas, and a live oak two feet in diameter marked $\overline{X}$ bears S. 20 E. 1285 varas, and running thence south ½ west with the line of the survey in the name of Yrino Gomez, called Las Barrosas, 3060 varas to a forked mesquite post set for the southeast corner of this survey, from which a live oak two feet in diameter



Plat of Santa Rosa de Abajo or Pedro Villareal Survey, Cameron County
I, John S. Herd, Co. Surveyor of Cameron Co. certify that the above is a true and correct copy of Santa Rosa de Abajo grant as surveyed by J. J. Cocke and recorded in Surveyors Record Book-B- page 91.
Survey completed Nov. 28th 1879
Jno. S. Herd
Co. Surveyor, Cameron Co, Tex.
June 20th 1891

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marked X bears N. 14¼ E. 1911 varas. Thence west at 545 varas a pond and several pitas, at 4240 varas new stage road, at 7285 varas pass County line at 164 varas south of 71 mile post, at 7496 varas Parker wire fence, a marked post, at 7800 varas a stake in the east line of a survey in the name of Pedro de la Garza, called Santa Rosa de Arriba, 1310 varas north of the southeast corner of said survey this line is 566 varas less than the distance called for in the original field notes; thence N. ¼ E. with the lines of the Santa Rosa de Arriba as surveyed at 1800 varas live oak timber, at 6360 varas a lagoon, at 7050 varas a corner of said survey in a pond in mesquite chapparal; thence east 1200 varas to a stake and mesquite marked X; thence N. ½ E. 1200 varas to a post in prairie, thence west 1200 varas to post in front of ranch just outside of wire fence; thence N. ¼ E. at 840 varas a large lagoon east and west, at 1840 varas the northeast corner of said Santa Rosa de Arriba survey in the Arroyo de los Olmos, from which a mesquite marked X standing on
70 the north bank of the Creek at a crossing called Paso de la Pita bears west 100 varas, corner post fallen into creek with caving earth. Thence down said creek with its meanders (giving same) to the northwest corner of said Paistle survey (no post or stone found at this corner). Thence S. ½ W. with line of El Paistle survey at 6400 varas a pond and several lagoons, at 10,600 varas, at 13900 varas sand hills at 17,420 varas the place of beginning. Estimated to contain five leagues and thirteen labors of land.

(c) Defendants introduced in evidence the field notes of surveys 80, 81, 77, 76, 73, 72, 71, 70 and 69, made by J. J. Cocke, County Surveyor of

(Here follows map marked p. 71.)

72 Cameron County, in 1881, for S. W. Parker, Assignee, by virtue of certificates issued to the G. C. & S. F. Ry. Co., each of which calls for its western boundary line to — coincident with the east line of a survey in the name of Pedro de la Garza called Santa Rosa.

(*d*) The defendants introduced in evidence the patents to the odd numbers of the above surveys issued upon the above field notes, which said patents call for the east line of the Santa Rosa de Arriba grant.

(*e*) Defendants also introduced in evidence the field notes of survey No. 84, in the name of the G. C. & S. F. Ry. Co., and surveys 60, 59, 58, 57, 56, and 51, in the name of C. & M. R. R. Co. made in 1881 for F. W. Parker by J. J. Cocke, County Surveyor of Cameron County, the field notes of all said surveys calling for their eastern boundary line to be co-incident with the western boundary line of the El Paistle grant, in the name of J. A. Balli.

(*f*) The defendant- also introduced in evidence the patents to the odd numbers of the above surveys issued on the field notes, said patents calling for the west line of the Paistle.

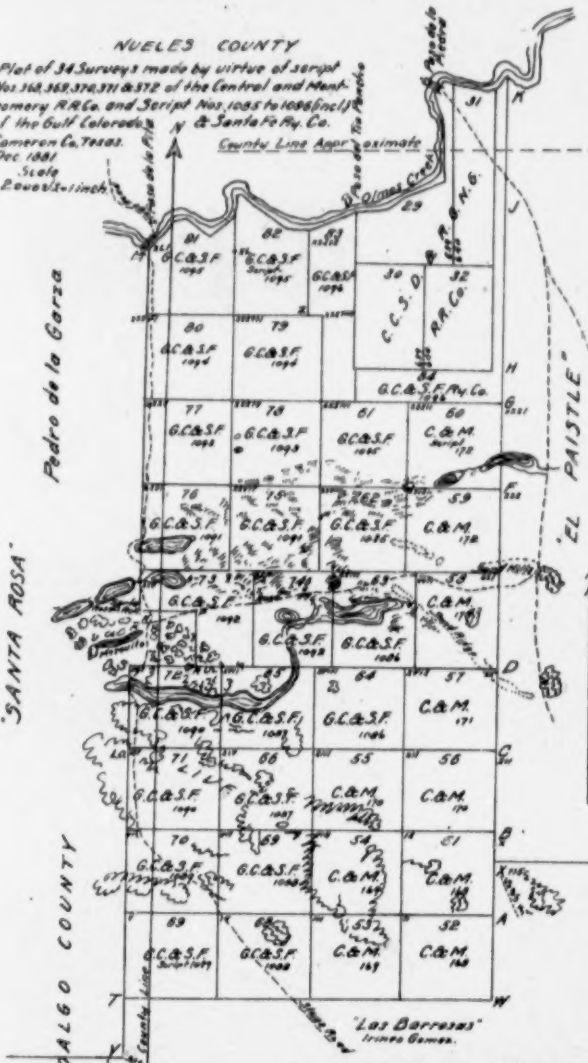
(*g*) The defendants also introduced in evidence the field notes made by J. J. Cocke in 1879 for F. W. Parker, Assignee, by virtue of certificates issued to the C. C. S. D. & R. G. N. C. R. R. Co. to surveys 1, 2, 3, and 4, which are located as indicated on the Cocke map hereinafter referred to. The field notes of these surveys do not call for the west line of the Paistle.

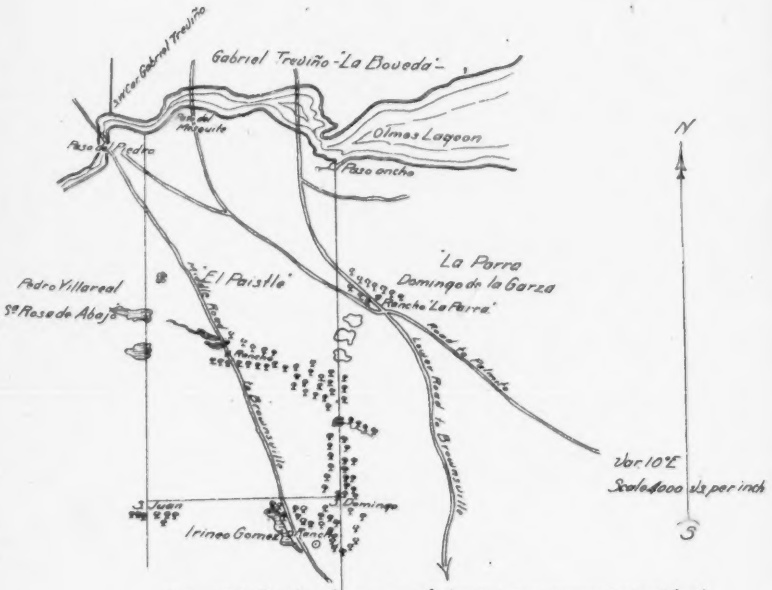
(*h*) The defendants also introduced the patents to the above surveys.

(*i*) The defendants also introduced in evidence the field notes made by J. J. Cocke in 1881 for F. W. Parker, Assignee, by virtue of certificates issued to the G. C. & S. F. Ry. Co., to surveys 83, 79, 78, 61, 75, 62, 74, 63, 65, 64, 66, 55, 67, 58, 68 and 53, and the patents to the odd numbers of said surveys; the field notes and patents showing that the said surveys call for and cover the land lying between the tier of surveys first above mentioned on
73 the west and the tier of surveys first above mentioned on the east.

(*j*) Defendants introduced in evidence a map and explanation thereof by J. J. Cocke of all of the individual and State surveys above mentioned, which is as follows:—

(Here follows map marked p. 74.)


NUECES COUNTY
Plot of 34 Surveys made by virtue of script Nos. 368, 369, 370, 371 & 372 of the Central and Montgomery R.R. Co. and Script Nos. 1095 to 1098 Incl. of the Gulf Colorado & Santa Fe Ry. Co.
Cameron Co. Texas.
Dec. 1881
Scale 2 Varas = 1 inch
County Line Approximate
No. 91 Subline Texas
A. 74
"SANTA ROSA"
Pedro de la Garza
"EL PAISTLE"
Juan Antonio Bolli
HIDALGO COUNTY
"Las Barreras"
Brownsville, Tex. Dec. 30th 1881.
Explanation of the accompanying Plot.
The land included in the thirty-four surveys now made and the four made in 1879 (38 in all) was formerly known as "Santa Rosa de Abajo" and was surveyed in 1879 and recorded in Surveyor Record B, page 91 and 92 as survey No. 21 of Cameron County. Letters A, B, C, ... K represent posts set for these surveys. Letters X, Y, N, & P, represent corners and posts of old surveys which were found exhisting. Letter T represents corner established by measure from X. Letter W represents corner established by measure from T & X. Letters L.O. represents a L.O. marked ⊥ and called for in the survey of Santa Rosa, found exhisting. Letter R, represents a corner of old survey, but no post found nor mkd. tree.
—Continued on other side—
Letter S represents a corner established by extending the lines K T L.O. to meet R.S. The lines P.R. and R.S. are partly through thickets and though no posts were found at R.S. there were evident signs of a "Senadro" having once been cut. The courses of the old lines were established by the lines N.P. and Y.L.O. also by the lines X.A. there being two mkd. trees near A.
The corner posts are marked in Roman Notation. - J.J.C. Co. Surveyor.
(172)



Plat and field notes of a survey of 5 Lgs 20 Labors, 58 5000 Sq Vs of land called "El Paistle," made for William Kenedy. Surveyed by H.M. Field, deputy surveyor of Cameron and Hidalgo Districts. Felix A. Blucher, Joseph Dunn, and Edward Harvy, Chain men. June 2, 3, 4, 5 A.D. 1869.

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75 (10) El Paistle:—

(*a*) This grant was confirmed to Juan Antonio Balli by Cameron County confirmation No. 41, Act of February 10, 1852 for five leagues called El Paistle.

The original Mexican grant is lost and neither of the parties have been able to find same, or a copy thereof, although diligent search has been made, but John G. Kenedy testified that he had seen the original in the possession of his father, Mifflin Kenedy.

(*b*) The defendants introduced in evidence the field notes of a resurvey of this grant made by H. M. Field, Deputy District Surveyor of Cameron and Hidalgo Land District, for Mifflin Kenedy on the 20th day of July, 1869, in which survey Felix A. von Blucher and two others were chain carriers, the said field notes reciting that it was made in accordance with an act of the Legislature of the State of Texas, approved February 10, 1852, and entitled "An Act to Relinquish Title of the State of Texas to Lands Therein," this being Confirmation No. 41 for the County of Cameron under said Act.

Said field notes have a map accompanying them which is as follows:—

(Here follows map marked p. 76.)

77 The field notes are as follows:—

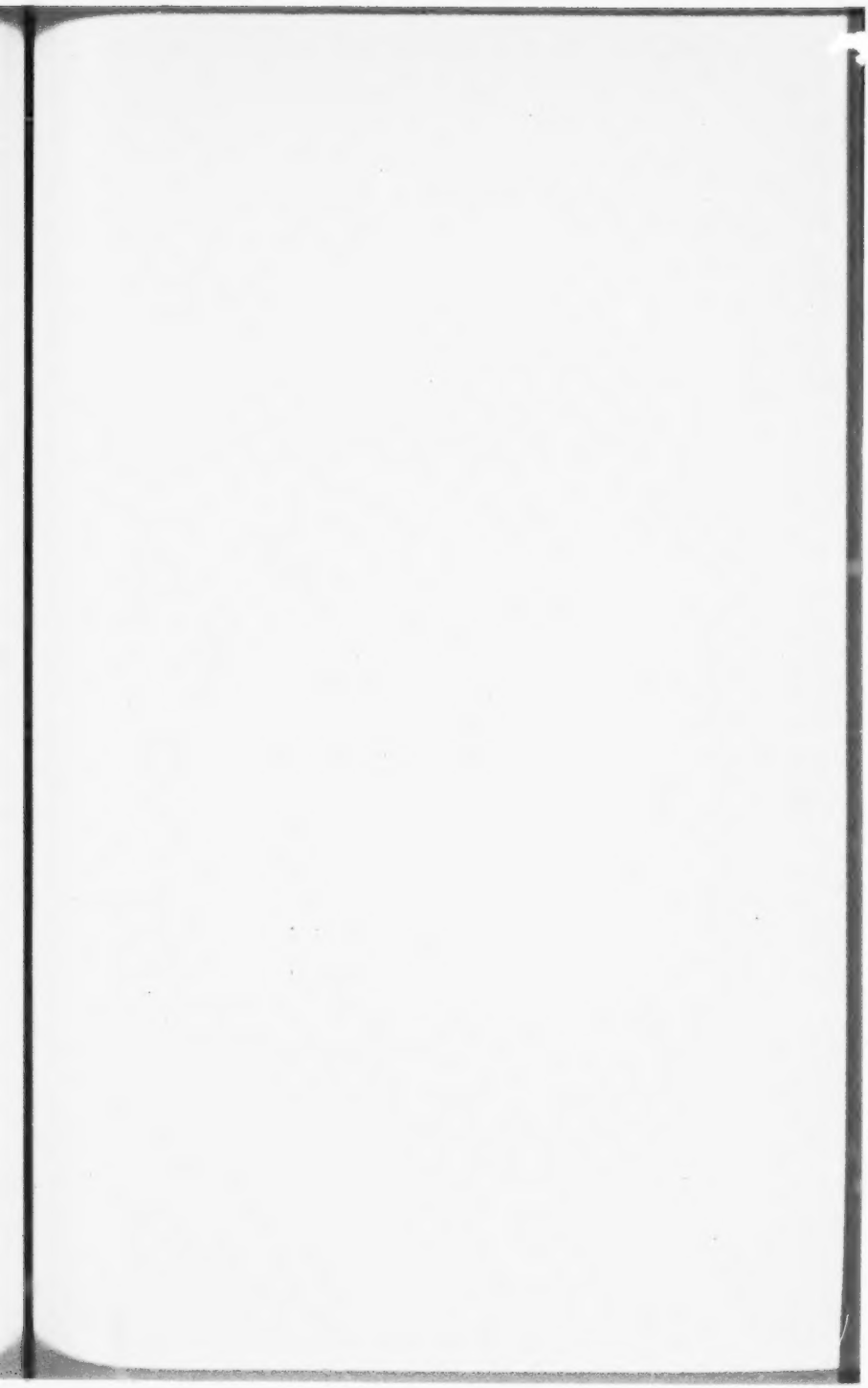
Beginning at a Mesquite post and stone mound on the south margin of the Olmos Creek for the northwest corner, designated as Los Mirasoles, from which the southwest corner of a survey in the name of Gabriel Trevino bears N. 63 W. 1563 varas on the left margin of the Olmos Creek. Thence south 760 varas the road to Penascal bears east at 3100 varas the middle Brownsville road bears S. 25 E. at 8100 varas enter large lagoon extending westward, at 8500 varas left lagoon, at 9780 varas enter lagoon, at 10,400 varas left same, at 13,930 varas pass over a sand hill thirty feet high, at 17046 varas the southwest corner designated as Lindero de San Juan, a post and stone mound from which a live oak 18 inches in diameter bears S. 20 E. 1285 varas, and a live oak two feet in diameter bears S. 61½ E. 715 varas, both marked X, this being the northwest corner of a survey in the name of Irino Gomez, and called Los Barrosas. Thence east with the north boundary line of said Gomez survey at 1718 varas marked a large live oak in prairie for line tree at 5953 varas cross middle Brownsville road bearing S. 25 E. at 8368 varas the original southeast corner designated as Lindero de Santo Domingo, a stone and post on the west boundary line of the survey in the name of Domingo de la Garza, called La Parra, from which a X live oak three feet in diameter, bearing the original corner mark X bears N. 27 E. 28 varas, this being the northeast corner of the Barrosas survey. Thence north with the said Domingo dela Garza survey at 1058 varas marked live oak for line tree, at 1680 varas line tree, at 3660 varas enter lagoon at 3900 varas left same, at 5060 varas marked two large live oaks in mott, at 5080 varas left Encinal timber, at 6700 varas enter lagoon in front of Parra Rancho, at 7000 varas left same, at 10,080 varas cross road bearing S. 53 E., at 10,300 varas cross the lower Brownsville road bearing southeast, at 11,460 varas marked large live oak for line tree, at 15,070 varas cross road to Penascal, bearing east, at 15,200 varas enter flat, at 15,590 varas left same, at 15,620 varas the original northwest corner of said survey in the name of Domingo de la Garza for the
78 northeast corner of this survey, a post and stone mound on the margin of the Olmos Lagoon, designated as the Lindero de Paso Ancho de la Carreta. Thence with the southern margin of the Olmos Lagoon and its meanders (giving them) to the place of beginning.

These field notes were filed in the General Land Office Aug. 5, 1869.

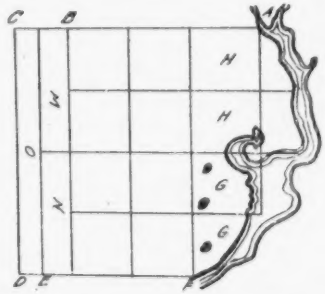
(*c*) The defendants introduced in evidence patent issued by the State of Texas on the above field notes, dated May 26, 1873.

(11) La Parra:—

(*a*) The State introduced in evidence the translation of the field notes of the original grant made by the State of Tamaulipas in 1832 to Domingo de la Garza and his son Albino, which is as follows:—



Mapa Demostrativo.



Map of La Parra Grant (Original)
as surveyed by Domingo de la Fuente,
on Aug. 15th 1832.

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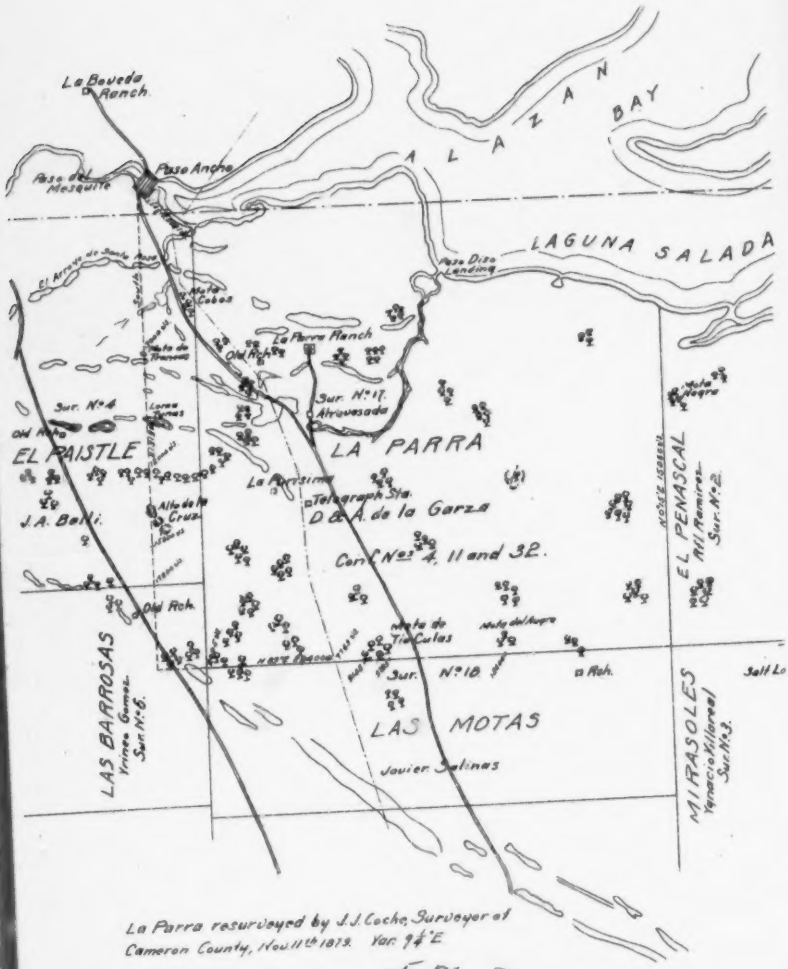

La Parra resurveyed by J.J. Cocke, Surveyor of Cameron County, Nov 11th 1879. Var. 9¼° E

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Texas
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Demarkation.

Having arrived at the Santa Rosa Creek, at the place called Paso Ancho, on August 15, 1832, and having measured the rope fifty varas with the varas composed of three geometrical feet, as provided by law, in the presence of all parties interested and others who accompanied me, and in view of all the rope was stretched from north to south fifty times which reached a point of Encinal de la Parra (the Parra timber) this running to the east, and continuing in the same direction there were measured 88 ropes more to Mogota de los Trancas, and another twelve to entrance of Encinal del Paisiano and with another 225 more, which makes 375 (18,750 varas) left the Encinal where a corner was established by setting a stake, which on account of having no known name was called San Joaquin, and from there the line was run from west to east and upon it the rope was stretched 156 times (7800 varas) which reached in front of Mogota de Tio Coulos, this being to the north, and continuing in the same direction there were measured another 244 ropes (12,000 varas) which makes four leagues complete, and with another, like amount on its opposite side and three and three fourths leagues from north to south compose the portion of fifteen leagues of pasture land as the present map shows.

(Here follows map marked pp. 79 & 79*a*.)

80 (Explanation:) The letters a, c, d, f, show the figure, extension and surface of the land. From point A. to point D. there is a distance of three and three fourths leagues, from point c to d four leagues complete. Therefore, if the distance a b is divided, parallels run from west to east one league distant one from the other, and then perpendicular with the same distance from north to south, there would be formed twelve equal square equivalent to twelve leagues of pasture land. There is three fourths of a league distance between b and c. If this be divided into two unequal parts, the larger of three fourths and the other of one fourth there would result another three leagues, on account of the rectangle m, n, o. Therefore, all of the figure a, c, d, f, composes the portion of fifteen leagues of pasture land, it being understood that the square d, g, is diminished because of the Lagoons Madre here included therein, and the broken one h, h, is excessive because there was taken therefrom the creek which runs into said lagoons, therefore if of the aforesaid the excessive of one is divided from what lacks in the other, there will remain fifteen leagues complete.

This survey was made by the Surveyor General, Domingo de la Fuente.

(*b*) The defendants introduced in evidence a certified copy from the Records of Deeds of Nueces County of a deed from Domingo de la Garza to Nicolas Grisanti to five leagues of land out of the La Parra grant, dated March 10, 1846, and filed for record on the 31st day of December, 1847, and recorded in Book A. commence- on page 223 and ending on page 247.

This deed is in Spanish and defendants introduced a translation thereof. The deed contains a copy of the original grant from the State of Tamaulipas, which is referred to in the deed and attached to it. The deed conveys five leagues of pasture land out of those which were granted by the Supreme Government of this department at the time it was a State of Federation, comprised within the bounds and places of the Parra and Paste and the Motts de Tio
81 Coulos of this jurisdiction, as more fully described in the instrument of denouncement surveying the grant, which by legal testimony he exhibits to me (the officer) that it may be protocolized in this instrument and incorporated in this transfer. That the five leagues which are now conveyed out of the fifteen comprising the grant should be understood and are understood to be the eastern part, bounded on said side by those which the said Mr. Garzia purchased from Rafael Ramirez, on the west by those which the grantor sold to Don Miguel McMahon at same place, which are also bounded on the north by an arm of the Lagoona Madre and on the south by the balance remaining out of the primative grant, being an equal amount of the leagues belonging to his son Don Albino Garza, all these portions being undivided and unconveyed, in which state he sells them to Don Nicolas Grisanta.

The original grant contains a petition for survey and a renewal of his denouncement by Jose Domingo Garza of ten leagues for himself and his son and says that is comprises the ten leagues aforesaid from the places called El Paste, La Parra and Motta de Tio Coulos. In

this petition he recites that he renews his application for a survey because the Surveyor General, Domingo de la Fuente, is then in the country for the purpose of making surveys of lands denounced by Don Xavier Salinas and Don Miguel Ynojosa. All formal parts of the grant and the proceedings thereon are not necessary to be here set out.

In the translation of the field notes as contained in this deed, the west line of the Parra is described as follows:—

At the said place Aroyo de Santa Rosa, at the point of Paso Ancho, on the 15th day of said month and year, I the said Judge of this survey ordered the same begun, and there being measured in my presence a rope of fifty full Mexican varas, and the surveyor having run a straight line from north to south fifty times, which reached the end of the Encinal de la Parra, this line estimated, and continuing in the same direction there were measured another 80 ropes, which reached the Mogate de la Trancas, with another twelve to the entrance of the Encinal de la Paistle, and with 225 more,
82 which makes 375, out of the encinal (timber) where a corner was established with a post stuck in the ground.

The translation of the balance of the field notes of this survey are substantially the same as those hereinbefore set out.

The Spanish of these field notes as contained in the copy of the original grant attached to the deed above referred to is as follows:—

Demarcacion—puestos en el Arrollo de Santa Rosa en el parage nombrado el paso ancho, a los quince dias del mes de Agosto de mil ochocientos trienta y dos despues de medio el cordel de cincuenta varas con la vara compuesta de tres pies geomentricos segun lo previence la ley en presencia de todos interesados y de mas vicinos que me acompararon a vista de todos se tendio el cordel de Norte a sur cincuenta veces que alcanso ala punta del Encinal de la Parra quedando este al Oriente y continuando por el mismo rumbo se midierron otras ochenta y ocho que alcansaron al mogote de las trancas, con otras doce a le entriado del Encinal del Pasta y con docientos viente y cinco mas que asen trecientos setenta yo cinco fuera del Encinal el donde se fijo un lindero con un palo clavado, que por no tener nomber conocido se le puso San Joaquin de donde se tire le linea de Poniente a Orinete y sobre ella se tendio el cordel ciento cincuenta y seiz veces que alcanso a en frente del mogote de tio culas quedando este al Norte yo con tinuando por el mismo rumbo se midieron otras docientos cuarenta y cuatro que hacen cuatro leguas completes que con otros tantos por su lado opuesto y tre leguas tres cuartos de frente de Norte a sur componen porcion de quince sitios de ganado mayor como el presente Mapa lo demuestra.

In the copy of the original grant as attached to the deed above referred to the inspection reads as follows:—

I, the aforesaid judge, in compliance with my power, did on the 7th of the current month, together with the surveyor, assisting witnesses and other individuals who have come with me, proceed to review the matter of the place called La Parra, Motta de Tio Coulos, and going from north to south to the place called San Joa-
83 quin, and from west to east to Motta de Tio Coulos, I saw that the land was dry and level, etc.

In the original grant the direction for the final title described the grant as being situated at the places called El Pasta La Parra and Motta de Tio Coulos.

(*c*) In the copy of the original grant as contained in the deed to Nicholas Grisanti, is found a map of the grant as it is recorded in the records of Nueces County in 1847, and the defendant introduced a photographic copy of said map as the same is recorded in Nueces County, and under the order of the Court this original photographic copy is sent up with the record. Marked Map H.

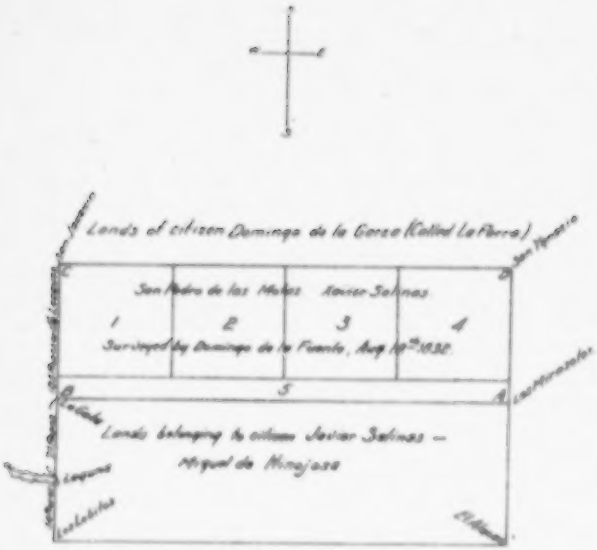
(12) San Pedro de los Motas and el Palmito:—

(*a*) The defendants introduced in evidence the field notes by Surveyor General Domingo de la Fuente, of the Las Motas grant made to Xavier Salinas, which recites that the grant is bounded on the north by lands surveyed for the citizen Domingo de la Garza, on the west, south and east by lands belonging to the State. It appears from the field notes of this grant that the Surveyor General at the same time that he made this survey, and as a part of this survey, also surveyed the El Palmito for Miguel Ynojosa the Palmito lying directly south of the Motas and its eastern and western boundary lines being an extension of the eastern and western boundary lines of the Las Motas grant at the Palmito.

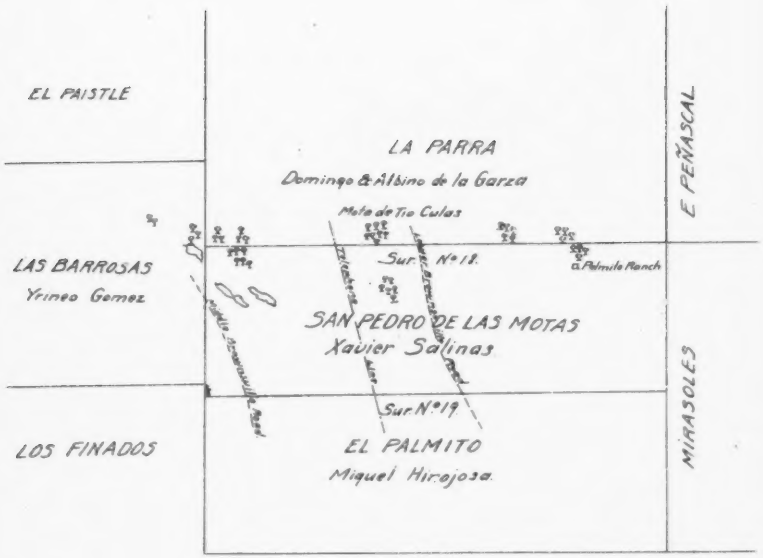
In making these surveys the Surveyor General began at the place called San Joaquin and ran south 125 ropes or 6250 varas, where he established the southwest corner of the Motas survey, naming it La Gata, and thence continuing south he measured 71 ropes or 3550 varas and reached the Lagoona de la Mesquite and with 54 more ropes, making 125 in all, where he set a post as the southwest corner of the Palmito grant for Ynojosa, and called this corner the Lobitos, and then states that a survey was made from the place called
84 San Ignacio and ended at the bounds of the land of the citizen Domingo de la Garza.

(*b*) The defendant introduced in evidence a resurvey of the Las Motas grant by J. J. Cocke, Deputy County Surveyor of Cameron County, made the 8th day of December, 1879, which is as follows:—

Beginning at the stone and post set for the southwest corner of El Penascal, a survey in the name of Rafael Martinez, and the southeast corner of La Parra, a survey in the name of Domingo and Albino de la Garza and running thence south 89° west with the south line of said La Parra tract at 4300 varas a large double live oak in Motta de Palmito at 5100 varas west end of sand hill in live oak thicket, at 7000 varas Motta del Augra bears north about 900 varas, at 12,620 southeast corner of Mogota de Tio Coulos, at 13,260 varas marked live oak at southeast corner of same, at 14,642 varas past telegraph line running N. 13¾ W., at 15,140 varas road to Purisirna Ranch at 20,400 varas set post marked X for the northwest corner of this survey on the east line of a tract called Los Barrosas, as surveyed by Felix A. Blucher. Thence S. ½ W. with line of said Barrosas survey 7610 varas to post marked X for the southwest corner of this survey and the northwest corner of a survey in the name of Miguel Ynojosa, from which post the Motta Sala (west end) bears S. 32 E. Thence north 89 east with the line of Miguel



No. 91
Galleria } p. 86
Texas



Scale 4000 Vs = 1 inch

Resurvey of Survey No 18, Completed Nov 25th 1879. Var 9 1/4 E.

J. J. Cocke, County Surveyor,
Cameron Co, Texas.

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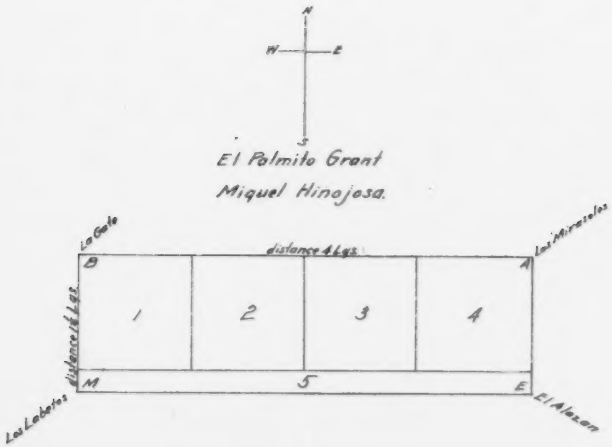
Texas



El Palmito Grant

Miquel Hinojosa.

Surveyed by Domingo de la Fuente Aug. 20th 1832

No 91
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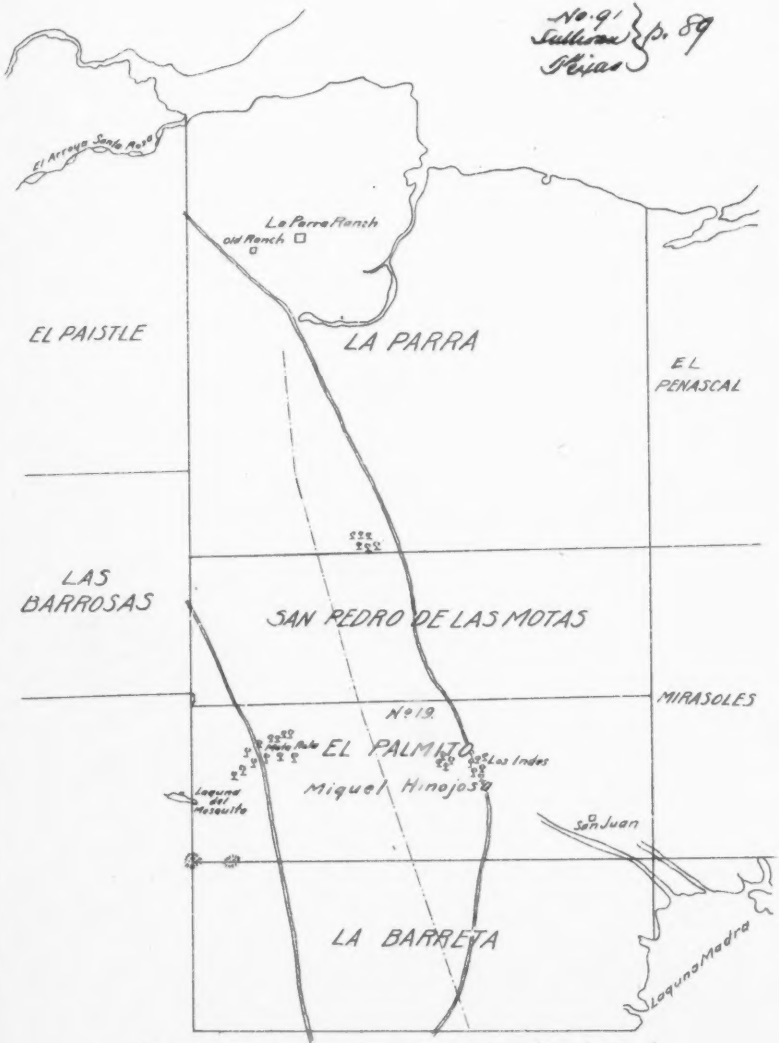
to
Texas
} b. 88



El Palmito Survey No 19- Resurveyed by J.J. Cocke, Surveyor of Cameron Co. Nov. 26th 1878. Variation 9½ East.

Ynojosa at 7763 varas pass telegraph line running south 17½ west, and at 20,630 varas an old post and stone the original southeast corner of this survey and a corner of the Mirasoles a survey in the name of Ignacio Villareal. Thence N. 1½ W. with the line of said Mirasoles survey 6720 varas to the place of beginning.

(*c*) The defendants also introduced in evidence the field notes of the survey by Surveyor General Domingo de la Fuente of the original grant to Miguel Ynojosa of the Palmito, which recites that it is bounded on the north by the lands of Xavier Salinas, and on the west, south and east by lands belonging to the State. In the field notes the same corners are called for as are mentioned in the
85 field notes by the same surveyor of the Los Motas.

(*d*) Defendants introduced in evidence the field notes of a survey of the Palmito by J. J. Cocke, County Surveyor of Cameron County, on November 26, 1879, which are as follows:—

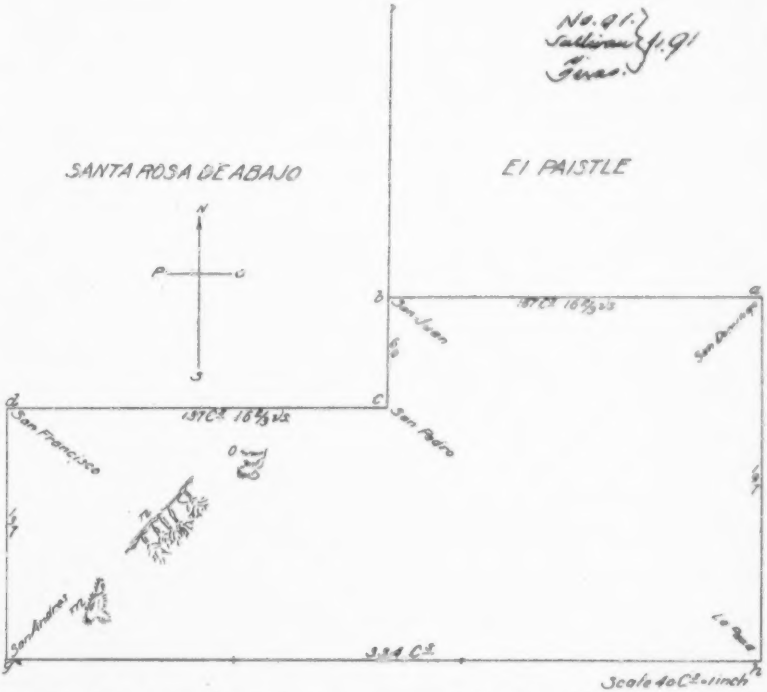
(Here follow maps marked pp. 86, 87, 88 & 89.)

90 Beginning at the southwest corner of a survey in the name of Xavier Salinas, a post marked X, and running thence south with the line of the survey called Las Finados at 3850 varas the Lagoona del Mesquito, called for in the original field notes, at 4110 varas left same, at 6710 varas set post marked $\overline{I}$ in a marsh surrounded by sand hills, for the southwest corner of this survey, and the north west corner of a survey in the name of Leonardo Salinas. Thence east at 1280 varas top of highest sand hill, at 3380 varas road, at 9700 varas telegraph line 1120 varas from the Mota de los Virositas, at 10,000 varas a post marked =/= near the north end of sand hills, and at 20,630 varas a stake for the Southeast corner of this survey and the southwest corner of a survey called Los Mirasoles, made in the name of Ignacio Villareal; thence north with line of said Mirasoles survey at 1470 varas a salt marsh on mud flat to 1680 varas, and at 7070 varas the southeast corner of said Salinas survey and the north east corner of this survey, a old post and stone. Thence S. 89 W. with the line of said Salinas survey 20630 varas to the place of beginning.

(13) Las Barrosas:—

(*a*) Defendant introduced in evidence the original grant by the State of Tamaulipas to citizen Ireneo Gomez for five leagues of land, together with the translation thereof. The material part of this grant consists of the map and field notes, which are as follows:—

(Here follows map marked p. 91.)



Map of the lands of Las Barrosas surveyed for citizen Yrineo Gomez. The sixty ropes which the Olmos Creek forced South to the land of Santa Rosa de Abajo impeded the squaring of this land because if left no space between one and other surveys. Therefore there resulted the hexagon irregular which is shown platted on the above map which area embraces 5 Sqs of pasture land according to the example established by the law of the State for the survey of wild lands. The angular boundaries and most noted places of the land were the following:— A-bdy of San Domingo, b-bdy of San Juan, c-bdy of San Pedro, d-bdy of San Francisco, g-bdy of San Andres, h-bdy of La Paza, m, n, o- mott and hills of Las Barrosas. The land is bounded on the East with that of Dn Xavier Salinas, on the North with those of El Paistle and Santa Rosa de Abajo and on the other sides by vacant lands.

Camargo, December 21st 1832

Antonio Canales.

The 60 ropes (3000 varas) which the Olmos Creek force south to the line of the Santa Rosa de Abajo, impede the aring of this land because it left no space between the other sur-s, therefore, there resulted the hexigon irregular which is shown tted on the above map, which area embraces five leagues of pas-e land, according to the example established by the law of the te for the survey of watered land.

The anguilar boundaries and most notable places of the land were e following:—

A. Boundary of Santo Domingo.
B. Boundary of San Juan.
C. Boundary of San Pedro.
D. Boundary of San Francisco.
G. Boundary of San Antonio.
H. Boundary of La Poza.
M N O. Mott and Hill of Las Barrosas.

The survey was made correcting the 10 variation to the north-st, which the needles have in these lands.

The land is bounded on the east with that of Don Xavier Salinas, the north with that of Del Paistle and Santa Rosa de Abajo and the other sides with vacant lands.

December 21, 1832.

This survey was made by Surveyor General Antonio Canales.

This grant was confirmed by the Act of February 10, 1852, being nfirmation No. 5, Cameron County.

(*b*) The defendants introduced in evidence the field notes of a survey of this grant under the Act of Confirmation above referred said survey and field notes being made for Mifflin Kenedy by M. Field, District Surveyor of Cameron and Hidalgo Districts, d in which said survey Felix A. Blucher and two others were chain carriers.

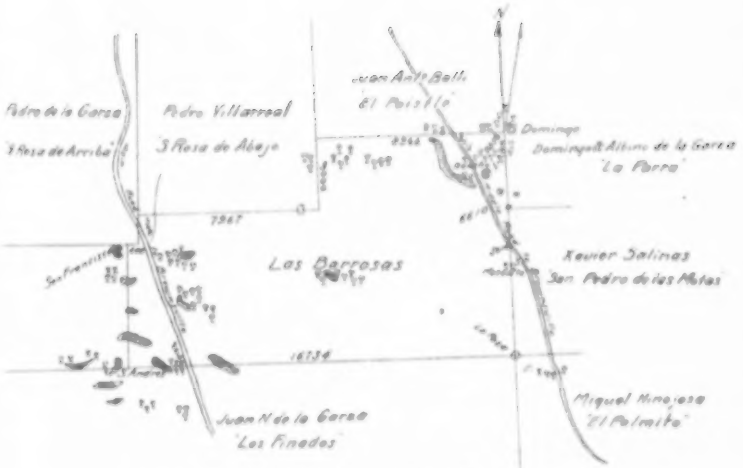
The field notes are as follows:—

Beginning at the original southwest corner of a survey in e name of Juan Antonio Balli, called El Paistle, a mesquite post d stone for the northwest corner of this survey, being designated Lindero de San Juan, from which a live oak 18 inches in diameter ars south 61½° east 715 varas, and a live oak 2 feet in diameter ars S. 20° E. 1285, both marked X. Thence south 3000 varas to st and stone mound for corner. Thence west at 840 varas entered goon; at 1284 varas left same; at 7300 varas crossed Brownsville ad bearing south, at 7967 varas set post intersecting the east undary line of a survey in the name of Pedro de la Garza and lled Santa Rosa de Arriba. Thence south with said Garza's survey ross the main Brownsville road bearing south 10° east 1308 varas its south east corner, post and stone mound from which a live oak mott bears S. 58° E. 606 varas. Thence west with the south undary of the said Garza's survey 400 varas to a post and stone r corner, designated as Lindero de San Francisco. Thence south at 0 varas entered lagoon, at 1280 varas left the same, at 5542 varas e original corner post and stone in the north boundary line of rvey in the name of Juan Nepomuceno de la Garza and called Las

Finados, for the southwest corner of this survey, designated at the Lindero de San Andreo, from which a live oak 18 inches in diameter and marked X bears N. 9½ E. 742 varas, also a mesquite marked K bears south 6½ east 753 varas. Thence east with the north boundary line of said Finados grant 2440 varas across the main Brownsville road, bearing south southeast, at 16734 varas the original southeast corner, a stone and post in a small lagoon designated as Lindero de la Poza, and serving for the northeast corner of the said Finados grant, also the southwest corner of a survey in the name of Xavier Salinas. Thence north with the said Salinas survey at 2790 varas the original line tree, a mesquite marked X, at 5010 varas the Middle Brownsville road bears S. 30 E. at 6610 varas passed the northwest corner of said Salinas survey, a post and stone in a lagoon and
94 with the west boundary of a survey in the name of Domingo de la Garza, and called La Parra at 8598 varas marked live oak 6 inches in diameter for line tree, at 8650 varas entered timber, at 9344 varas marked double live oak for line tree, at 9856 varas the original northeast corner of this survey, a stone from which a live
X
oak 3 feet 6 inches in diameter, bearing the original corner marks X bears N. 27 E. 28 varas, this being designated as Lindero de Santo Domingo, serving for the southeast corner of a survey in the name of Juan Antonio Balli. Thence west with the south boundary of the said Balli survey at 2415 varas crossed the middle road to Brownsville bearing south southeast, at 4315 varas left timber, at 6650 varas marked large live oak in the prairie for line tree, at 8368 varas the place of beginning.

Accompanying said field notes is the following plat:—

(Here follows map marked p. 95.)



Survey & plat made for Mifflin Kenedy, assignee of Irineo Gomez, tract of land called Las Larrosas by

Felix A. Blucher } Chain-
Joseph Dunn } Carriers
Edward Harney }

H.M. Field, Deputy Surveyor,
Cameron & Hidalgo Districts.

Surveyed June 1st & 2nd & 3rd & 4th 1869.

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96 (c) Defendants introduced in evidence the patent to the above grant issued on the above field notes by the State of Texas on the 26th day of May, 1873.

(14) Los Finados:—

(a) The defendants introduced in evidence the field notes by Surveyor General Antonio Canales of the survey of the above grant for ten leagues of pasture land, made December 2, 1833, together with the plat accompanying same, which shows the grant in a rectangular form, calls for its northwestern corner to be the Lindero de la Jarita and calls for its northern and southern boundary lines to be 400 cords or 20,000 varas in length and its eastern and western boundary lines to be 250 cords or 12,500 varas in width.

(b) The defendants introduced in evidence the field notes of a resurvey of the above grant made for Mifflin Kenedy by H. M. Fields, Deputy District Surveyor of Hidalgo County, under and in accordance with the decree of court confirming the same.

The field notes are as follows:—

Beginning at the southwest corner of a survey in the name of Irineo Gomez, called Las Barrosas, and designated as Lindero de San Andres, a post and stone mound from which a live oak 18 inches in diameter and marked $\hat{X}$ bears N. 29½ E. 742 varas and a mesquite 10 inches in diameter bears S. 6½ E. 753 varas, marked K. Thence west at 600 varas salt lake, at 1025 varas crossed salt lake, at 6025 varas entered lagoon, at 6250 varas left the same, at 6516 varas set post and stone in the shallow portion of the Laguna de la Jarita for the northwest corner as designated in the original survey. Thence south at 2250 varas marked live oak 10 varas east of the line, at 3500 varas crossed lagoon 100 varas wide, at 4800 varas crossed lagoon 200 varas wide, at 5300 varas crossed lagoon 50 varas wide extending east and west at 7000 varas entered scattering live oak timber, at 8,000 varas marked line tree in the nogote
97 de las Auras, at 8600 varas left the same, at 12,500 varas set post and stone mound at the corner designated as the Lindero de las Cabezas for the Southwest corner, from which a live oak 14 inches in diameter bears S. 75° W., and the Rancho of Rafael Trevino bears N. 30° W. about two miles. Thence east at 2000 varas entered the Santa Rita motts, at 2420 varas live oak for line tree, at 2500 varas left Santa Rita motts, at 6060 varas entered lagoon, at 6400 varas left the same, at 10780 varas marked live oak 18 inches in diameter 5 varas north of line, north of and near the Taboncillo motts as designated in the field notes of the original survey, at 13506 varas crossed the main road from San Patricio to Brownsville, bearing S. 25° E. at 14,400 varas entered Lagoon, at 14,800 varas left Lagoon, at 17,000 varas entered flats and shallow lagoons, at 18,500 varas left the same, at 21,600 varas entered large lagoon extending from E. S. E. to W. N. W., at 22,850 varas left the same, at 23,250 varas the original south east corner, a post and stone designated as Lindero de San Juan, from which a mesquite mott on the margin of said lagoon bears N. 61 W. 1350 varas, intersecting the west boundary line of a survey in the name of Leonardo Salinas

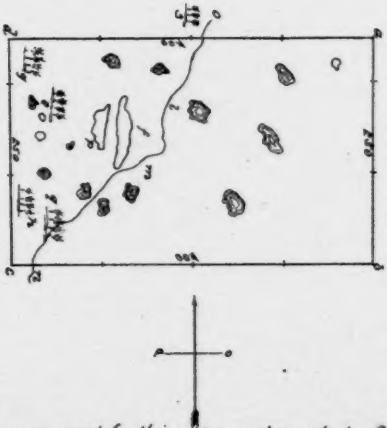
49

called La Barreta. Thence north with the said Salinas survey at 5870 varas passed its northwest corner, and with the west boundary line of a survey in the name of Miguel Hinojosa 12,500 varas to its northwest corner for the northeast corner of this survey, a post and stone in a small lagoon, this being the original southeast corner of the said survey in the name of Irineo Gomez and designated as Linder o de la Posa. Thence west with the south boundary of said Gomez survey at 14324 varas crossed the main Brownsville road, bearing S. 25 E., and passing through scattering live oak timber, designated on the original map as Mota de los Gachupines, at 16,734 varas the place of beginning.

Accompanying said field notes is the following map:—

(Here follow maps marked pp. 98 & 99.)

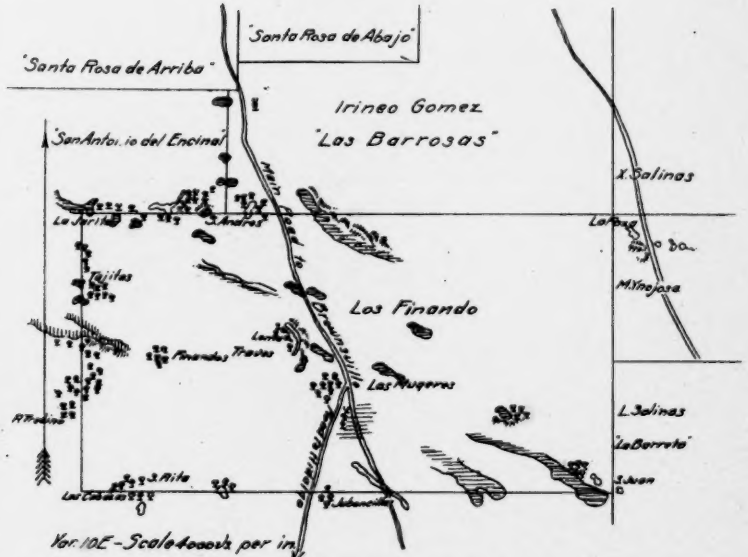
No. 91.
Sullivan
Texas.
} p. 98



Land of Finados surveyed for the citizen Juan de la Garza—
Explanation of the Points.- a Corner of the Poza, b-Corner of San Juan,
c-Corner of the Cabezar, d-Corner of the Jarita, e-mott of Finados,
f-the Atravesada hill, g- Mott of the Tapitos, h-Mott of the Auras,
i-the Albezea, o,l,m,n,- Road from Matamoras to La Bahia.
p-Lake of the Atravesada, q-Mott of the Mugeres,
s-Mott of the Gachupines

Reinosa, Dec. 2nd 1833.
Antonio Canales.

No. 91
Sullivan
Texas.
} p. 94



Map of Los Finados grant made for Mifflin Kenedy, the assignee of Juan N. de la Garza by H.M. Field, deputy surveyor for District of Cameron surveyed June 5&6 7,8,&9 & 10th 1869. Felix A. Blucher, Joseph Dunn and Edward Harney, Chain Carriers

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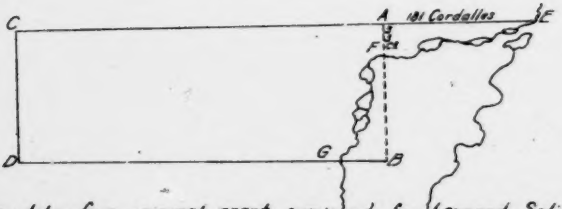
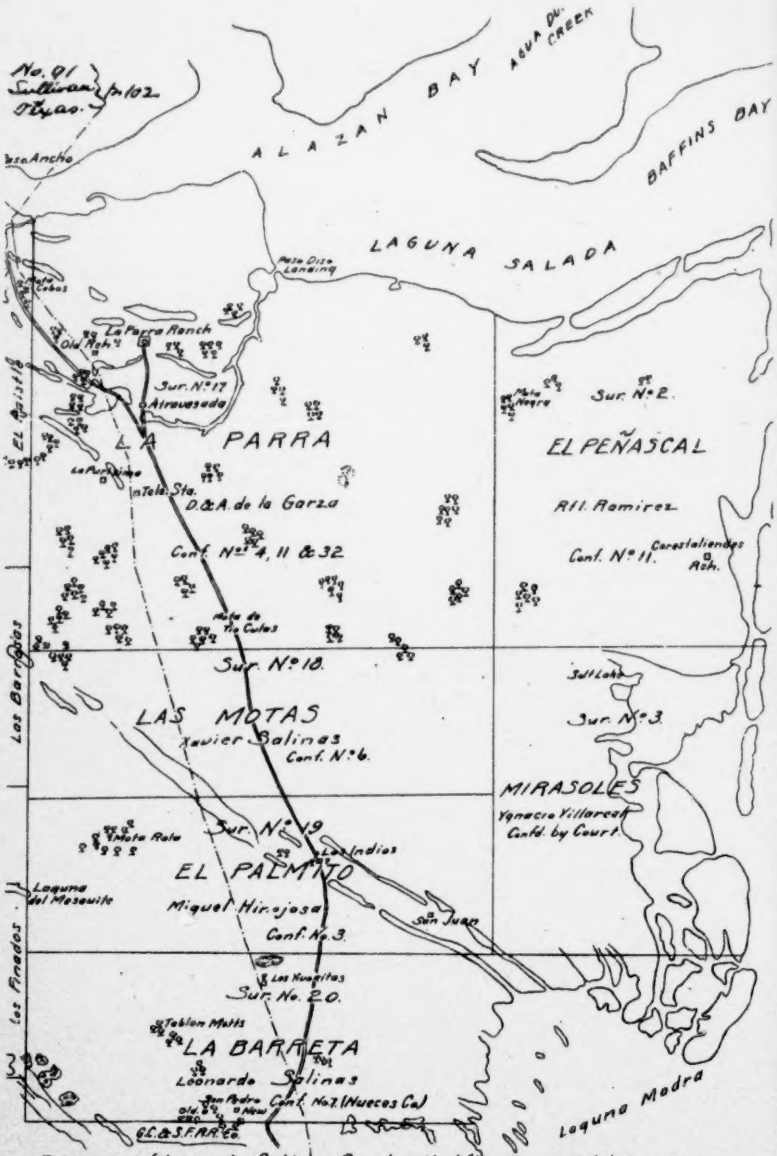


Copy of a map taken from original grant surveyed for Leonardo Solinas, called La Barretta. A line was run from North to South from A to B 33 times, which equaled the edge of the Laguna Madre at point F and continuing in the same direction to B, thence were measured 117 ropes with which were completed one league and 1/2 – From which place the rope was taken up and going to point C when the other corner of said Hinojosa is found on the West side, and runing a line from North to South from C to D there was measured 1 1/2 leagues to equalize the line A B, the line A C being 4 leagues complete as shown by the titles of the citizen Miguel Hinojosa. The Survey of this land having been finished, the rectangle A.B.C.D was formed, and because it has 1 1/2 leagues of front and 4 leagues in depth there was completed 5 leagues of pasture land less the part F.G.B – which the laguna Madre encroaches upon this land and for the completion of said 5 leagues, there was added the part A.E.F. which makes a corner on the East which forms a sort of a pointed triangle with a base of 181 ropes from A to E and 33 ropes in altitude which has been calculated to be equal to the part F.G.B. & C.

Surveyed by Domingo de la Fuente –



Resurvey of Leonardo Salinas Grant, called 'La Barreta', being survey No. 20, Confirmation No. 7 as of Nueces Co. situated in Cameron Co. Survey completed by J.J. Cocke, Surveyer of Cameron Co. Texas. Nov. 24th 1879. Var. 9¼ East. Recorded in Book B-pp-

100 This survey was made in 1869. The field notes were filed in the General Land Office August 5, 1869, and patent was issued to same by the State of Texas on the above field notes on May 26, 1873.

(14) La Barreta:—

(*a*) The defendants introduced in evidence the map and field notes by Surveyor General Domingo de la Fuente, of the survey of the original grant made by the State of Tamaulipas to Leonardo Salinas.

The map is as follows:—

(Here follow maps marked pp. 101 & 102.)

103 The field notes and explanations of the map are as follows:—

On the 29th day of the month of August, 1834, arriving near the Laguna Madre, where the land of the citizen Miguel Hinojosa ended in the presence of the judge of this survey, Notary Public, the Attorney General, the interested party, adjoining owners and residents who were present, after measuring the rope, giving it 50 varas with the vara composed of 3 geometrical feet as proscribed by the law in this matter, in the view of all the line was run from north to south, from A. to B. upon same the rope was stretched 33 times which reached the edge of the Laguna Madre at the point F. and continuing in the same direction to B, there were measured 117 ropes with which were completed one league and ½. From which place the rope was taken up and going to point C where the other corner of said Hinjosa is found on the west side, and running a line from north to south, from C. to D, there was measured 1½ leagues to equalize the line A. B., the line A C being 4 leagues complete, as shown by the title of the citizen Miguel Hinojosa. The survey of this land having been finished, the rectangle A. B. C. D. was formed and because it has 1½ leagues of front and 4 leagues in depth there was completed 5 leagues of pasture land less the part F. G. B., which the Laguna Madre encroaches upon this land, and for the completion of said five leagues there was added the part A. E. F., which makes a corner on the east which forms a sort of a pointed triangle with a best of 181 ropes from A to E, and 31 ropes in altitude which has been calculated to be equal to the part F. G. B.

(*b*) The defendants introduced in evidence the field notes of a resurvey of the above grant under confirmation thereof by the act of February 10, 1852, said resurvey being made by J. J. Cocke, Surveyor of Cameron County, in December, 1879, and is as follows:—

Beginning at the S. W. corner of a survey called El Palmeto made in the name of Miguel Hinojosa at a post marked standing in a marshy flat surrounded by sand hills, and running
104 thence E. with the line of said Hinojosa at 1280 varas the top of highest sand hill, at 3000 to 3080 varas the main road, at 9700 varas telegraph line, at 10,000 varas a post marked =/= about 1000 varas N. of the Viroritas mott, at 15,000 varas a post marked =/= at 16,020 varas an old road runs N. E. at 20,340 varas a post, at 20,630 varas the S. W. corner of a survey in the name of Ygnacio Villareal called Mirasoles, and continuing same course with line of said Mirasoles survey at 21,400 varas to 21,580 varas a salt marsh, at 22,700 to 22,880 varas a salty cayo or slough at 25,340 varas a cayo, at 25,520 varas a broad pond or cayo, at 26,020 varas entered cayena, at 29,140 varas set a post on west bank of broad boggy cayo, at 30,100 varas main cayo very boggy, at 30,420 varas entered Potrero de las Canelos, at 31650 varas set a stake for the N. E. corner of this survey on the shore of the Laguna Madre, from which a pita bears N. 77 W. 80 varas. Thence along the shore of the Laguna Madre with its meanders S. 27 E. passing mouth of cayo 1000 varas to N. E. end of Potrero Lopeno, 3 S. 16

W. 1400 varas, 4. S. 40 W. 1590 varas, 5 S. 29 W. 1200 varas, 6, S. 72 W. 720 varas, 7. N. 43¼ W. 320 varas to cayo, 8. 77¾ W. 940 varas passing cayo, 9 N. 50¼ W. 1345 varas, 10. N. 73¼ W. 570 varas crossing cayo 11. S. 79¾ W. 400 varas, 12, N. 60 W. 3300 varas over br*aod* plaza or beach leaving numerous cayos to the E. and N. 13 W. 2840 varas over plaza and islets of grass, 14. S. 18¾ W. 2825 varas over grassy knolls and cayos interspersed 15. S. 6 W. 3000 varas over said class of ground, 16 S. 71 W. 420 varas set a post on bank marked T for the S. E. corner of this survey. Thence W. at 2500 varas a cayo, and the Mogote Mentidero bears S. about 1300 varas, at 3400 varas a cayo, at 4330 varas post marked ⩵/≡ at 5600 varas a road, at 7250 varas Mota Velareros bears S. about 200 varas, at 7360 varas telegraph line, at 8960 varas a post marked ⩵/≡ at 10400 varas live oak thickets, at 11,200 varas live oak trees, and the ranch of San Pedro bears N. 300 varas (jacal) at 14,280 varas main road, at 14,677 varas a post, at 17,400
105 varas a salty flat, at 19,000 varas set a post marked T for the S. W. corner of this survey, from which a large live oak X marked T standing in the N. end of the Mogote del Alazen bears N. 64 W. 2975 varas. Thence N. at 2300 varas left flat and entered the sand hills, at 2720 varas passed corner of Finados tract, at 3000 varas set a post marked ≡/⩵ and at 7500 varas the place of beginning, estimated to contain seven leagues and seven labors of land. All pasture land, sandy prairie, with a few motts of live oak and many salt marshes.

The State introduced in evidence the report of J. J. Cocke and C. F. Von Blucher, surveyors, appointed by the Court by its order dated September 4th, 1903, which reads as follows:—

In the District Court of Travis County, 26th Judicial District.

No. 18899.

THE STATE OF TEXAS
vs.
D. R. FANT.

To the Hon. R. L. Penn, Judge 26th Judicial District:

In pursuance to an order of your Honor dated September 4th, 1903, at Chambers in the City of Austin, Texas, appointing J. J. Cocke and C. F. H. von Blucher surveyors, to survey the premises in controversy in above styled cause, and directing them to ascertain and report to the Court all the facts that may be necessary to enable the Court to determine the true location of the Santa Rosa de Arriba Grant in Hidalgo County, and giving directions for the work, we, the said surveyors, beg leave to submit the following:—

Report.

Leaving our respective homes, C. F. H. von Blucher at Corpus Christi and J. J. Cocke at Brownsville, on the 23rd of January, 1904, we met at La Parra on the 26th and having previously arranged for certain witnesses to be on hand and the necessary assistants and camping outfit, we went into camp near the Paso Ancho on that day, and compared notes preparatory to beginning work on the next day. The weather being too bad to use instruments, we remained in camp, examining maps and documents such as we had,

106 on the 28th we went to the crossing of the Olmos Creek called Paso Ancho and there found the post and stone set by J. J. Cocke for the North West corner of La Parra Grant and North East corner of El Paistle Grant. From this post we ran the meanders of the right banks of the Creek which here merges into the Lagoon, till we came to the point where the North East corner of the Paistle, as patented, making a distance of 1,633.3 varas South and 2,194.5 varas East from the North West corner of La Parra. Here we could find nothing to indicate that there was, or ever had been a crossing. The water being too wide and deep and the bottom too boggy, and there were no old roads leading to it. Whether the North East corner of the Paistle is at the post set by J. J. Cocke or a point 160 varas further west, we do not decide. But for the purposes of this survey we use said post as a starting point and ran South through the post set by Cocke, where the Trancas Mott (now died out) stood, correcting the needle 8° 40′ East for the true Meridian. This Mott was still in existence when J. J. Cocke *d*urveyed the La Parra grant in 1879 and resurveyed the Paistle in 1883, and he set the post to mark the spot as most of the tress in Mott were dead. This Mott and the Paso Ancho were the two principal natural land marks called for in the survey of the La Parra grant, the West line of which is the East line of the Paistle. We continued the same course South to the South line of the Paistle as patented, reaching the South East corner of the same as resurveyed March 2nd, 1883, at a distance of 17720 varas. We then measured across the Paistle tract, West, from a point 9,600 varas South of Paso Ancho, making a distance of 8,688 varas to intersection with the West line of the Paistle as run by J. J. Cocke in 1883, at about 6,800 varas South of the North West corner of same, course N. 1 West, on the variation used by us. We then measured across the North end of the Paistle as resurveyed and found the distance to be 8,742.59 varas, being an excess of 375.92 varas over the distance mentioned in the order of Court, and on the courses followed by us would make an excess of 102 varas at the South East corner of Section 53, C. & M. Ry. Co.

We next began at the stake on the West line of the Paistle

107 2,200 varas (44 cordels) South of the Olmos Creek and 375.92 varas West of the distance 8,366.67 varas measured, from Paso Ancho and ran West, passing County line of Hidalgo County at 5,010 varas, and at 5,490 varas the East line of the Santa Rosa de Arriba, as now surveyed, at a point 734 varas South of the

iron propr its North East corner mark which is also the North West corner mark of section 81, G. C. & S. F. Ry. Co., and at 8190.75 varas we set a stake for the West line of Santa Rosa de Abajo and East line of Santa Rosa de Arriba, point A. on Accompanying map. These two distances 375.92 and 8,190.75 make 8,566.67 varas, equal to 171 cordels 16.2/3 varas, called for in the map of the original survey. From this point we ran north 800 varas to the Creek in a bend of the Creek. There was no occasion to make offset south 10 cordels. Returning to stake 8,190.75 we ran west 5,533 varas at which point we made offset South to avoid the many gulleys and small bends of the Creek and ran 790 varas and then turned West again and ran 806 varas at which point found the creek bed to be 680 varas North of us and at 1600 varas came to bank of the Creek running almost North. Thence we made another right angle and ran South 2,260 varas and turned West, the two offsets we made being equal to the 51 cordels as shown on the original map of Santa Rosa de Arriba. Then we ran West 2,867 varas and set a stake making in all 10,000 varas, 200 cordels for the proper distance from East to West of Santa Rosa de Arriba grant, point B. on said map. This stake is set at a point marking the accurately measured distance from Paso Ancho across the three tracts and in accordance with the original calls for distance, and is near the Creek. Not finding any indications of a "Salto" or fall, we proceeded farther West, passing a large Mesquite tree 1.½ varas north at 124 varas and at 376 varas from said stake set another stake. The thin layer of soft rock has almost crumbled away, and no fall left. A North and South line from this fall would pass 741 varas farther West than one run from the 10,000 vara point as measured by us. Then continuing West from our 10,000 vara point at 1,000 varas we came
108 to the bank of the Olmos Creek just below the place where the "tenaja grande" a large pool, now filled with sand, formerly existed and carrying our line on same courses crossed said Creek, and at 1280 varas recrossed to South bank above said pool, at 1933 varas a post on South bank marked D. R. F., decayed and partly down, bears North 108 varas. This post is near a former fence running North 12.½° West crossing said Creek. We find no call for this post in any field notes that we have seen.—Continuing our line west, at 2560 varas we set a stake and thence ran North 150 varas to a large Mesquite post without marks standing on South bank of the creek. We find no calls for this post and it is of recent date. From this post the meanders of the Creek up stream are as follows: S. 87 31′ W. 90 vs.—S. 25 40′ W. 120 vs. S. 77 55′ W. 108 vs.—S. 48 10′ W. 327 vs.—S. 36 40′ W. 240 vs.—N. 61 30′ W. 361 vs.—N. 56 30′ W. 280 vs.—S. 86 40′ W. 233 vs. N. 82 10′ W. 246 vs.—W. 84 varas to the point where the upper line of the first resurvey of the Santa Rosa de Arriba by F. A. Blucher strikes the Olmos Creek. Here we could find no marks nor are any to be found along the bank of the Creek on either side from the last mentioned post to this place.

We next began the assumed West line of the Santa Rosa de Arriba from the stake set for the distance of 10,000 varas in width of the

same which stake is 76 varas South of bank of the Creek, at point B. on the accompanying map, and ran South, at 2,280 varas passed over East end of the Alto de las Tuans, at 2400 varas a dry lagoon in thicket, at 3900 varas entered low ground, where water flows Eastwards in time of heavy rains, 5930 to 5980 varas the principal channel of the Baluarte so called, Creek, (lowest ground) at 6930 varas set a stake in line from which we ran West 2890 varas to a post set by M. Hanson Jr., for the South east corner of "El Tule" grant, from which a large Live Oak marked X bears North 63 West 44.½ varas. This we take to be also the North east corner of Section 155 T. M. Ry Co. From this post west 1826 varas to the supposed Northwest corner of Section 155, on the South Boundary line of "El Tule" at the point where it intersects the West boun-
109 dary line of the Santa Rosa de Arriba as first made by F. A. Blucher in May 1859. Not having seen the field notes of either of the two Sections 155 and 156, nor of the "Tule" Grant, we could not fix the corners of the Sections except as above; the distance from the East boundary of the Forester survey to the South East corner of the Tule being 1826 varas the East boundary of Section 155 would run South 1980 varas to the North East corner of Section 156.

Then we returned to our stake at 6930 varas and continued our line South, using same count, at 8,260 varas a Mott of Live Oaks, at 8,480 varas a fence running South 20 West, at 8,662 varas a fence running East and West 40 varas East of fence corner, at 8,777 varas entered Live Oak timber, at 9,240 varas leave Live Oak timber, at 9,720 varas leave South end of last grove about 100 varas West, at 12,500 varas set a stake at 15,000 varas set a stake, point C. on said map, for end of this line from which a live oak bears South 39.¼ East 194 varas and the middle Endino Mocho Windmill bears North 34 West, and the East end of the Mott in which a marked tree stood that was called for in F. A. Blucher's field notes of 1859, bears North 51 West 1,600 varas. From this point we ran East through the Portales Mott, at 3,240 varas left Portales Mott near a windmill South of line, at 5,450 varas set a stake on sand ridge, and at 10,000 varas set a stake in Salt Flats marked D. on map accompanying this report, and 18,050 varas South from the point A. Thence we ran North at 40 varas a Salt Lagoon, at 125 varas leave Lagoon, at 960 varas South bank of a large Salt lagoon, at 1,394 varas, at 1,620 varas set a stake 50 varas North of North bank of Tresquila Lake, at 2,214 varas set a stake on this line which is marked E. on accompanying map, and is 8,451 varas South 89.¼ West from the South East corner of section 53 C. & M. Ry. Co. From this stake we ran a course North 89 08' East, at 277.8 varas struck the North west corner of Kenedy Pasture Company's fence, at 2,510 varas the North East corner of same, at a point 75 varas North 00 55' West from North West corner of said Company's old fence.

110 This corner was located by M. Henson, County Surveyor of Cameron County, and is 25 varas farther North than the lines established by F. A. Blucher as the North line of the Barrasas

tract, and re-established by J. J. Cocke. This point is on the East line of the Santa Rosa de Arriba as run by F. A. Blucher in May 1859, as shown by his bearing tree for the South East corner which still stands, and by the marked trees found on line running North from this point. This point is also the South West corner of Section 69 G. C. & S. F. Ry. Co. and is 5940 varas South 89.¼ West of the South East corner of Section 53 C. & M. Ry. Co. The South line of the Santa Rosa de Abajo calls for a distance of 8366.2/3 varas which measured along the above course Eastwardly, would fail to reach the line of the Paistle extended South to form the West line of the Northern portion of Las Barrosas, by 185 varas.—Returning to the point on F. A. Blucher's East boundary of the Santa Rosa de Arriba, we ran North 00 55′ West at 1825 varas passed South West corner of Section 70, at 2,155 varas passed large Live Oak with very old marks, 2 varas East, at 3650 varas South west corner of Section 71, at 5,200 varas passed Live Oak with old marks, at 5,473 varas passed South West corner of Section 72, at 6,162 varas passed a fence running South 88.¾ East, at 6,349 varas a large Live Oak with very old marks bear West 7 varas, at 6,700 varas South bank of Lagoon of Santa Rosa, at 6,825 North bank of same, at 7,304 varas the North west corner of Section 72. The stake is at the South West corner of a concession by P. Villareal to Pedro de la Garza as the same was placed by F. A. Blucher in 1859, no bearing trees found here, and Mr. C. F. H. von Blucher does not certify to this point being the South West corner of the rectangle h. i. g. l. as fixed by F. A. Blucher.—We returned to a point at 6,162 varas on the East line of the Santa Rosa de Arriba, as surveyed, where it crosses the fence, and ran thence North 88.¾ West 602 varas along said fence to a point 15 varas South of an old and partly burned Live Oak with old

marks thus $\overset{\circ}{\times}$ and thence South 73.½ West 236 varas to
111 large spreading live oak 5 varas in circumference with indistinguishable old mark, and from the first mentioned tree, we ran North 14 East 185 varas, thence North 35 West 154 varas to a mesquite with Mistletoe. These three points are indicated on the accompanying map.—We then began at a stake on the East boundary of the Santa Rosa de Arriba as surveyed 340 varas South of the North West corner of Section 72, and ran west 240 varas to the summit of a low ridge near the west end of the Laguna de Santa Rosa, thence North 62.½ West 49 varas to the foot of the bank of another lagoon, which in very high water connects with the other just mentioned, to a point at the foot of the hill on which the present ranch of Santa Rosa stands, and to pass water, ran thence South 53 West, 148 varas, then South 88.¼ West crossing said lagoon on a small dam now broken through and marking the present water level; reaching the North edge of the lagoon at 327 varas and then leaving lagoon ran North 81 West 106.½ varas through brush, North 54,½ West 260 varas; North 73 West 40 varas through brush, North 42 West 142 varas North 83.¾ West 126 varas to a stake in prairie 100 varas south of a lagoon in the low ground of the so called Baluarte Creek, in this section distinguished chiefly by

a chain of lakes or ponds. Thence West 1,100 varas to a stake due North from our line through the Tresquila Lake. Thence we ran North at 342 varas, a fence at 1041 varas a fence, at 1,092 varas road to Mota Negra, at 1,364 varas a fence, at 2,793 varas a fence, at 2,365 varas an Artesian well bears South 86.¾ East at 3,732 varas an Artesian well bears South 43 East and a windmill bears North 14 West, at 5,759 varas a stake on hill from which a windmill bears South 28.¼ West, at 6,085 varas a small pond, now dry; at 8,364 varas the stake set by us marking the breadth of the Santa Rosa de Abajo grant, said point A on said map projected from said Paso Ancho crossing, and assumed Eastern Boundary of the Santa Rosa de Arriba grant. Our chaining was done with great care and accuracy, closing within 10 varas of the required distance. We had no data whereby to locate the rectangle g. h. i. l. mentioned in
112 the grant to Pedro de la Graza, as having been ceded by the Citizen Pedro Villareal according to certain conditions.—We cannot reconcile the position of the point "r" angular corner of the "Barrosas" grant situated on the East boundary of the Santa Rosa de Arriba with our work. The same appearing south of the Tresquila Lake in the Original map of the Santa Rosa de Arriba grant. The angular and linear measurements herein described, while made in strict accordance with the said order of the Hon. Court and in conformity with the calls of course and distance in the original grants, cannot be adjudged to fit, precisely, the natural objects called for in the original papers, without some modification of the same. The tract tinted Green on the accompanying map, is the survey of the Santa Rosa de Arriba grant, as made by Messrs. Blucher and Dix under a former order of your Honorable Court, from the field notes in the Petition in this cause.—

The tract tinted Yellow represents the Paistle Grant as patented.

The map accompanying this report is marked Exhibit "B"—The said C. F. H. von Blucher does not agree with the said J. J. Cocke that the boundaries referred to on lines 29, 30, 31 page 5 and lines 3 and 13 on page 6 of this report as being the original boundaries of the Santa Rosa de Arriba as resurveyed by F. A. Blucher in 1859, are such in fact,—claiming that the lines as shown in green on the accompanying map are the correct representations of the F. A. Blucher resurvey of the Santa Rosa de Arriba as ascertained by himself and John J. Dix, by a survey made under an order of your Honorable Court in April 1903, a report of which, with a large map marked Exhibit "A" is now on file with said Court, and the said C. F. H. von Blucher furthermore refers to said map marked Exhibit A for a correct representation of the grants known as the Lucero, and La Noria de Tio Ayala, in relation to this report.—

The said C. F. H. von Blucher furthermore submits the following, to-wit:—

1st. That he did not have access to any title papers cover-
113 ing the Paistle tract, either Patent or Original Grant, and does not know its boundaries otherwise than he was informed by the said J. J. Cocke.

2nd. That the calls for the boundary lines of the Santa Rosa de

Abajo in the paper purporting to be the title to the same, are inconsistent in that the Eastern and Western boundary lines are spoken of as North and South lines, whereas the same paper makes the North boundary line 4 cordels or 200 varas longer than the one on the South. And the said J. J. Cocke says that the boundaries referred to on pages 5, 6, & 7 of this report are the true boundaries of Sections 69, 70, 71 and 72 which are coincident with the East boundary of the Santa Rosa de Arriba as the same was run by F. A. Blucher in 1859, as shown by the bearing tree for the South East corner as located by said F. A. Blucher and by the old marks found along the line as run by us; and that the West line of Sections 73, 76, 77, 80 and 81 is coincident with the East line of the Santa Rosa de Arriba as we found it on the ground North of the inset as it was placed by F. A. Blucher. The boundaries of the Paistle and Barrosas grants tinted in orange are those claimed by the Kenedy Pasture Company, under re-surveys made by J. J. Cocke, County Surveyor of Cameron County in 1883 and by M. Hanson, Jr., County Surveyor of Cameron County in 1899.

J. J. COCKE.
C. F. H. v. BLUCHER.

THE STATE OF TEXAS, *County of Nueces:*

On this day personally appeared before me, the undersigned authority, C. F. H. von Blucher and J. J. Cocke, who being by me duly sworn, on their oaths say, that they made the surveys shown by the field notes in the foregoing report as therein stated, and made the map thereto attached, and that the same are correct and true, to the best of their ability, and that all the matters of fact in the foregoing report contained and set forth are true, and that the bills and accounts thereto attached are true and correct.

114 In testimony whereof, witness my hand and seal of office at Corpus Christi, Texas, on this the 26th day of February, A. D. 1904.

[SEAL.]

R. O. COOK,
Clerk District Court, Nueces County, Texas.

(Endorsed:) 18899. The State of Texas *vs.* D. R. Fant. Surveyor's Report, Filed Feb'y 29, 1904, Jas. P. Hart, Clerk.

The Plaintiff and defendant introduced in evidence the report of F. M. Maddox, with the exhibits thereto attached, the said Maddox surveyor being appointed by the Court by its order of date May 30, 1904, which said report reads as follows:—

In the District Court, 26th Judicial District, of Travis County, Texas.

No. 18899.

THE STATE OF TEXAS
vs.
D. R. FANT.

To the Hon. V. L. Brooks, Judge in and for said Court:

I beg to submit my report of survey made under your order dated May 30, 1904, in above cause.

After receiving the order from the District Clerk, I had several copies of same made, and prepared a letter to be sent or delivered to the agent or owner of each ranch on which I would have to survey. I attach a copy of my said letter hereto, marked "A."

I left Austin Saturday, June 3, San Antonio Sunday, June 5, and arrived in Corpus Christi the same day.

On Monday June 6, I called on Major Evans, Secretary of the Kenedy Pasture Company, and gave him a copy of the order of survey together with my letter. Mr. Evans said that Mr. Kenedy was in Brownsville attending the funeral of Mrs. Putegnat, and requested me to wait until I could see Mr. Kenedy. I told him that I would go on to Santa Rosa, via Alice, and get my outfit together, by which time he could see Mr. Kenedy and let me hear from him.

On Tuesday, June 7, I left Corpus Christi for Alice and that
115 evening arrived at Santa Gertrudes. The next day, June 8, I proceeded on to Santa Rosa.

On the road I met Mr. John Kenedy and told him that I had left a copy of the order with Major Evans, at Corpus Christi.

I arrived at Santa Rosa the evening of June 8.

On June 9, I received from Mr. John C. Kenedy, President of the Kenedy Pasture Co., the attached letter (marked "B"). At four o'clock that evening I left Santa Rosa for the Paso Ancho crossing of the Olmos Creek and camped that night about two miles south of Sarita, near the east line of Survey No. 59, Central & Montgomery Railroad Co.

About six o'clock, on morning of 10th, Mr. Allen, with two or three other gentlemen and a deputy Sheriff, as I afterwards learned, by the name of Garza, rode into camp. I told them that I was on my road to Paso Ancho to begin the survey and hoped that Mr. French would meet me there the next day. Mr. Allen and the others except Garza left us. Mr. Allen said he would send a man with a key to let us through the gate leading to Paso Ancho. We arrived at the gate about ten o'clock but found no one. I requested Mr. Garza, the deputy sheriff, to go to the La Parra ranch and get the key, which he very kindly consented to do. After Garza had been gone about ten or fifteen minutes, Mr. W. C. Sullivan said that if I wished, he would also go. I told him I had no objections to his going. In about two hours they returned without the key. I then told Mr. Garza that I must pass through the gate and requested him

to open same, this he declined to do. I then showed him your supplemental order when he in turn showed me a telegram dated from Corpus Christi and purporting to be from and signed by the Hon. James B. Wells and Mr. J. G. Kenedy addressed to the Sheriff of Cameron County, requesting him to immediately send one of his most trusted deputies to Santa Rosa to be under the direction of Mr. Kenedy, which telegram was the cause of the deputy sheriff being there, a copy of which telegram is hereto attached and marked "C."

I then told Mr. Garza, the Deputy Sheriff, that I intended to
116 open the gate, but if he, as Mr. Kenedy's representative told me not to open the gate, I would stop there and report same to your Honor. He declined to prohibit or prevent my opening the gate. I then pried open one of the links or the chain (said link being broken some time before) and entered the Kenedy Pasture Company's pasture. I then wrote a letter to the Kenedy Pasture Co., and gave same, together with a copy of your supplemental order, to Mr. Garza, the deputy sheriff, to be delivered by him to said Company.

I then called Mr. Garza to witness that I had left the gate and chain in the same condition I found them, and proceeded to a camp at the artesian well about one and one half miles from Pasco Ancho, where I remained until the next day, when Mr. Thomas and another gentleman from the La Parra Ranch came to my camp and requested me to wait until that evening or the next day, at which time they felt sure Mr. J. G. Kenedy and Mr. French, the surveyor and representative of Mr. J. G. Kenedy would arrive; this I consented to do.

Mr. Kenedy and Mr. French arrived at my camp on Sunday morning.

After having a consultation with Mr. Kenedy during which I requested him to assist me in finding landmarks and corners, he, in reply, told me that he was acting under the advice of his attorney, and therefore, declined to do or say anything whatever that would tend to recognize the survey. I told him I would be very glad if he would show me his corners and particularly the Pasco Ancho and Trancas mott, but he smiled and said as before that he would do nothing that tended to cause him in any way to recognize the survey; that he, however, would have a man with us at all times to open the gates and show us the way, but further than that, except to furnish supplies and necessaries if we should need them, he declined to do anything.

At this time Mr. French, the surveyor, came up and asked Mr. Kenedy how long he wished him to stay with me on the survey. Mr. Kenedy replied that he desired him to remain during the whole survey, especially until the Tule survey was run, and asked me if that would be agreeable to me. I replied that so far as I was con-
117 cerned I certainly had no objections. Shortly after this Mr. Kenedy and Mr. Garza, the deputy sheriff, left.

I wish here to say that while Mr. Garza, Mr. Thomas and some others were heavily armed, none of them treated me disrespectfully.

In the making of the survey under the order of your Honorable Court, I ascertained all facts on the ground showing the position or location on the ground of the surveys as originally made and as resurveyed, some of them as patented, and also as claimed, as I understood, by parties claimant thereto.

The original grants and surveys, as your Honor will see from an examination of the field notes and plats, call for few natural or artificial objects that can now be found on the ground.

I began my survey at the point on Los Olmos Creek just north of mud flat, said point being at the N. E. corner of the El Paistle tract, Juan Antonio Balli, Original Grantee, as surveyed in 1859 by F. A. Blucher, and marked "A" on map hereto attached. In so far as the crossings of the Olmus are concerned, and the evidence of trails and roads leading thereto and across the Olmus Creek at this point, it is as shown on my map.

I was not on the north side of the Olmos Creek, but from the points of entrance of wagon roads and cattle trails the said crossing begins about 1000 varas above and west of point marked "A" on the map hereto attached, and continues from 500 to 600 varas up stream where there are numerous roads, trails and crossings, evidencing the fact that the Olmus Creek is not crossed at any one point, but at almost any point for a distance of about 750 to 1000 varas, as above stated. The main going down point or crossing is about 750 varas west of point marked "A" on map.

By reason of these facts and certain conditions, as I found them on the ground, I was wholly unable to decide upon any precise and exact point which could be designated as being the point known as and called the Paso Ancho crossing, so that the same would be sufficiently certain to be used as a natural object fixing the exact location of the northeast corner of the El Paistle Grant, Juan Antonio
118 Balli, Original Grantee.

Hence I proceeded as herein reported.

I ran from point A south (with variation of 8° 30′ E.) crossing mud flat at 360 varas south bank of same, at 571 varas stake in old road said to be to Penescal (C. S. 64° E.). Thence West at 93 varas new road (C. S. 30° E.), at 29 varas enter mud flat or draw, at 368½ varas fence (C. S. 29¼° E.), at 653 varas telephone line (C. N. 9° 15′ W.) up center of mud flat up to 1300 varas, at 1460 varas old road (C. N. 30° W.) at 1545 varas south prong at head of mud flat or draw, at 1900 varas set stake, at 2000 varas edge of lake at 2194½ varas stake. Thence north at 590 varas mud flat (C. N. 70° W.) at 2241 varas point in fence line on Olmus Creek. Thence N. 52° 45′ W. 84 varas to an old live oak post in fence line (course fence N. 52° 45′ W.)

Monday, June 13 (*Variation* 8 30′). Began at a stake 2194½ thence south at 840 varas lagoon, at 1000 varas stake, at 2350 varas fence (C. S. 81° 25′ W.) 56 varas west of gate, at 3162 varas drain, at 4000 varas stake in small lagoon, at 4896 varas road; at 4913 varas point 13 5/10 varas east of cedar post (now down) marked TRANCAS (took center of hole in ground to be point where post stood) from said point a burnt live oak stump about 8 inches in

diameter bears E. 4 varas, another live oak stump about 15 inches in dia. bears S. 43° E. 39 varas, another live oak stump six inches in dia. bears S. 59½° W. 16¼ varas, at 6000 varas stake so marked.

June 17 (*Variation* 8° 30′ E.). Beginning at a stake marked 6000, set June 13. Thence South at 6580 varas lagoon 150 x 150 varas, at 7100 varas small lagoon, at 7287 varas ranch road (C. S. 50° W.) at 7450 varas lagoon, at 7484 varas ranch road, at 7500 varas stake, at 7850 varas post foot of hill, at 7920 varas to 8000 varas lagoon, at 8848 varas cross fence around water hole (C. a little north of west) at 8867 varas edge of water in lagoon, at 9082 varas water's edge and fence on south side of lagoon, at 10200 varas struck large live oak timber, at 10259 varas live oak seven
119 inches in diameter blazed on south side for about four feet up marks appear to be about ten years old, at 10501 varas fence (C. S. 14½° E.) at 11000 varas stake at root of grape vine on S. E. side of live oak mott, at 12000 varas stake, at 12,350 varas stake.

Saturday, June 18 (*Variation* 8° 30′). Beginning at stake 12,350 set on June 17. Thence South at 13,000 varas stake at opposite fence corner to east, at 15,506 varas stake. Thence east 151 varas to a live oak stake from which a live oak twelve inches in diameter marked X X bears S. 77¼° W. 52 4/10 varas, forked live oak tree two feet in diameter marked M. bears N. 44¼° E. 58 8/10 varas a x cedar post in fence line marked on north side JAB on south side I. G. bears west 3 9/10 varas, (this is point C. on map, Cocke's S. E. cor.)

To run a line from this corner to the Olmos through the Trancas mott as indicated by post and as claimed by Cocke, will strike the Olmos at point D and require a course of N. 1° 08′ W. and I so show it on my map.

June 18 (*Variation* 8° 32′). Beginning at stake (point C on map). Thence N. 88° 43′ E. at 2046 varas the S. E. corner of Juan Antonio Balli grant, as patented (point B on map) W. line Parra.

June 14 (*Variation* 8° 30′). Beginning at stake marked 571 on June 12, at end of course South 571 varas. Thence South crossing series of old roads from 50 to 240 varas, at 661 varas cross pasture fence 7½ varas north of gate (course of fence S. 29¼° E.) at 1000 varas stake at 1750 varas to 1800 varas passed through west end of lagoon, and 1900 varas dry lagoon, at 2000 varas drove stake on south of lagoon, at 2020½ varas pasture fence, at 2631 varas road (C. N. 45° W.) at 3400 varas enter scrub live oak, at 3675 varas enter young live oak timber, at 3711 varas a live oak blazed on north side bears east 21 varas, at 3725 varas live oak about 30 inches in diameter blazed on S. W. side bears West eight varas, at 3730 varas live oak 12 inches in diameter blazed on west side bears east 21 varas, at 3780 varas telephone line (C. S. 30¼° E.) a mott of live oaks bears about N. 80° W. 200 varas, at 5000 varas stake, at
120 5099 varas road to Sarita, at 5105 varas branch of running water from artesian well, at 6350 varas point on small elevation on which are two small scrub mesquites, at 6411 varas road

(C. east and west) at 7460 varas mesquite knoll fifty varas wide, at 9074½ varas fence (C. S. 89¾° W.) at 9350 varas top of ridge, at 9500 varas set stake, at 9671 varas live oak mott of 22 L. oak trees, at 9700 varas center, at 9728 varas left young live oaks, at 10,281 varas point.

Thence east 53½ varas to a live oak two feet in diameter marked ≡ ≡ on west side, another live oak twenty inches in diameter with three deep cuts is two varas north, another live oak twenty inches in diameter marked ≡ is 6¼ varas south, another live oak, leaning bears south 6½ varas (Blucher's 1859 marks).

June 15 (*Variation* 8 47′). Beginning 1½ varas west of live oak marked ≡ ≡ same being 52 varas east of end of course south 10,281 varas.

(At this point we changed variation to 8 47′ E.)

Thence South (same count) at 10,914 varas a live oak about 12 inches in diameter marked with three very old deep cuts or notches bears east 4,½ varas, at 11,450 to 11,750 varas an open flat, at 11,867 varas young live oak mott (very thick) at 11,954 varas left it, at 12,000 varas drove stake; at 12,636 varas forked live oak blazed on east side and three hacks on west side, upper hack dim, others plain, bears west 5 varas, at 13000 varas drove stake, at 13,477 varas fence (C. S. 89½° W.) at 13,500 varas drove stake.

June 16 (*Variation* 8- 47′ *E.*). Beginning at stake 13,500 varas set on 15th. Thence south (same count) at 13,750 varas center of mott of live oaks, at 14,100 varas set stake, at 14,371 varas live oak two varas west of line (no marks) at 14500 varas set stake, at 15,000 varas set stake, at 15,440 varas 9 1/3 varas east of center of a very old and now dead live oak three feet and three inches in diameter and almost destroyed by fire, all bark, except on south west
121 side being off, I can discover no marks on this tree, but it has an old scar on the south west side; at 15466 varas point of intersection of line to the S. E. corner of the "Paistle," as located by J. J. Cocke (Point C. on map) and 2068 varas N. 88° 43′ E. from said corner, at 15,500 varas set stake (Point B).

To run a line from a point S. 27° W. 28 varas (point B on map) from the above tree back to the point 10,281 varas on map, where I found the four marked live oaks, will require a north and south line with variation of 8° 32′ E., and from said trees back to a corner at mud flat (point A) will require a course of N. 10′ W. and I have so mapped same.

Being E. 22 vs. of La Parra line we set over 22 vs. to get true line M.

June 29 (*Variation* 8° 32′ *E.*). Beginning at stake 15,500 set June 15. Thence West 22 varas to point 34 varas south of S. E. corner of Paistle, as fixed by burnt live oak (point B on map).

Thence South at 502 varas live oak 18 inches in diameter marked ≡ on west, at 572 varas live oak 15 inches in diameter marked ≡ on east, at 750 varas left scrub live oaks and entered prairie, at 1285 varas scrub live oak, at 1360 varas and on south

through alternating scrub live oaks and small prairies, at 3018 varas opposite fence corner.

Thence S. 89° 8′ W. 24 varas to point where the two fences would join if prolonged (corner of fence to W. 35 varas).

Thence S. 35′ E. at 28 varas the other fence corner, on S. 35′ E. with fence line (same count) at 1057 varas point 13¼ varas S. 89° W. from point of intersection of east line of Barrosas grant as run by Blucher with line ran by J. J. Cocke for south line of La Parra (said point of intersection being point R on map) at 1950 to 2000 varas old road (C. S. E.) at 3800 varas dry lagoon about 75 varas
west of line at 3900 varas prairie, at 3982 varas north post
122 of gate, at 4725 varas Zachuistle flat or lagoona, at 5000 varas set stake, at 6838 varas drove stake, at 7025 varas sand hill, at 7312 varas shield fence at willow bushes, at 7373 varas fence running S. 89° 40′ E. (course of fence on south 35′ E.) this point is on sand dune which continues south one half mile (S. W. cor. S. P. de Motas).

Thence S. 89° 40′ E. with fence at 75 varas, the shield fence at 300 varas sand dune, at 1654 varas west gate post, at 2500 varas set stake.

June 30 (*Variation* 8° 32′ —). Beginning at stake 2500 set on 29th. Thence with fence S. 89- 40′ E. (same count) at 5000 varas set stake, at 5750 varas Zachuistle flat, at 5975 varas leave it, at 7432 varas west gate post, at 8444 varas telephone line (C. N. 18° 35′ W.) from 8950 to 9000 varas salt flat, at 9100 to 9250 varas large flat (C. N. about 35° E.) at 9325 to 9490 varas another flat, at 9700 to 9750 varas small cayo, at 9780 varas same cayo, at 9960 varas main lake or flat (dry) at 10,125 varas leave it, at 10,325 to 10,825 varas another cayo, at 11,110 west gate post, at 11,294 varas shield fence, at 11,345 varas intersect fence (C. N. 1° 32′ W.) at 12,482 varas corner of fence (course of fence south is S. 9° 26′ E.).

Thence S. 9° 26′ E. with fence line, at 13, — 75 varas salt flat, at 1725 varas left same, at 2152 varas north gate post, at 3374 varas shield fence, at 3524 varas fence (C. N. 81° 57′ E.).

Thence N. 81° 57′ E. with fence 238 varas to corner of same, thence S. 11° 42′ W. with fence 930 varas to north gate post, at 1196 varas corner of fence (fence from this point runs S. 47¾° W.).

July 1 (*Variation* 8° 32′). Beginning at corner of fence at end of course S. 11° 42′ W. 1196 varas. Thence S. 14° W. 850 varas to stake. Thence S. 45° E. at 7300 varas set stake. Thence E. at 525 varas end of cayo about 50 varas to north, at 1000 varas cayo, at 1713 varas drove stake on bank of small cayo, at 2550 varas point.

Thence north 1287 varas drove stake so marked. Thence on
123 north (same count) 2287 varas drove stake marked 1000.

July 2 (*Variation* 8° 32′ *E.*). Beginning at stake marked 1287 set on July 1. Thence north 170 varas to point. Thence west 634 varas to point. Thence south 292 varas to point where set stake marked "S, 35,400 E. 20,000."

Began at stake marked 1000 set July 1. Thence north 528 varas to point. Thence west 634 varas to point set stake marked "33,750 S. 20,000 E.—634."

July 3 (*Variation* 8° 32′ *E.*). Began at stake marked "33,750 S. 20,000 E. 634" set July 2. Thence north 536 varas set stake marked "33750 S. 20000 E." (Point T. on map). Thence East at 670 to 800 varas cross swail or draw connecting chain of lakes (C. S. E.) fresh artesian water, at 1147 varas cross ditch (C. S. 30° E.) at 2865 varas top of knoll or small hill, at 8840 varas set stake so marked (point U on map) at 8860 varas point on water edge of cayo, at 10,153 varas drove stake on small island.

(The distance from point 8860 to 10,153 = 1295 varas, was measured by tr-angulation.)

July 13 (*Variation* 8° 32′ *E.*). Beginning at stake marked 8840, point U on map, set July 3.

Thence from said stake by tr-angulation north 917 varas, east 2192 4/10 varas. Set stake marked = at end of call 2192 4/10 varas.

Thence north from 917 varas point (same count) at 1270 varas cayo, at 1370 varas left it, at 1560 varas cayo, at 1650 varas left it, at 1700 to 1750 varas another cayo, at 1900 to 1950 varas another cayo, at 2400 varas another cayo, at 2500 varas set stake marked XXV.

Thence East at 225 varas small cayo, at 700 varas another cayo, at 1168 varas large cayo at 1500 varas left same at west side of Pretrero Favias Island at 1700 varas top of ridge, at 2705 varas drove stake on Lagoona Madre, on east side of said island.

124 Beginning at stake marked = set at end of trangulation call East 2192 4/10 (2192 4/10 + 8840 = 11,032 4/10). Thence East at 720 varas to stake near cayo (point V on map).

July 14 (*Variation* 8° 32′ *E.*). Beginning at stake set on 13th at end of call 720.

Thence N. 33,½° E. 190 varas to point on Lagoona Madre at water's edge. Thence S. 30° E. across mouth of cayo at 400 varas south side of cayo at 950 east end of Protrero Lapena Island.

Thence meandered along coast line of Protrero Lopena Island as follows, viz.—

S. 5° E. 425 varas; S. 17,½° W. 838,½ varas; S. 31° W. 350 varas; S. 35° W. 766 varas; S. 47° W. 543 varas; S. 34° W. 780 varas; S. 15° W. 300 varas S. 38° W. 289 varas; S. 55° 30′ W. 280 varas; S. 76° W. 200 varas; S. 89° W. 170 varas; N. 67° 30′ W. 156 varas; N. 40° W. 160 varas; N. 12° W. 200 varas.

Thence S. 89° 30′ W. 600 varas across mouth of cayo and left same at 681 varas to point on south side of small island.

Thence N. 76° 30′ W. 170 varas; N. 62° W. 228 varas; N. 37° W. 200 varas; N. 21° W. 380 varas; N. 9° E. 250 varas; N. 24° E. 330 varas; N. 74° E. 360 varas, stake on cayo.

July 15 (*Variation* 8° 32′ —). Beginning at stake marked 33,750 S. and E. 20000, set on July 3. At this point I hunted for 400 to 500 varas every way for the S. E. corner of Palmito grant, but found none.

Thence north at 687 varas. At this point I again in same way searched for said Palmito corner, but found nothing.

At 2500 varas a stake.

July 5 (*Variation* 8° 32′ *E.*). Beginning at corner of fence at end of course S. 35′ E. 7373 varas, called for June 29.

Thence S. 35′ E. at 1100½ varas fence (C. S. 85° 27 W.) from 1500 to 1700 varas sand hills at 3696 varas north gate post in
125 small Zachuistle flat, at 4330 varas the north bank of Mesquite Lake, at 4450 varas stake on lake, about 200 varas from east end, at 4557 varas south bank of lake.

Beginning at stake 4451 varas in lake. Thence up lake N. 84° W. at 450 varas opposite east end of Mesquite brush on north side of lake, at 1150 varas north bank of lake about thirty varas to right, at 2400 varas point.

(The above 2400 varas line ran about midway between bank and the water. The water is from 50 to 125 varas wide. The lake from end of 2400 vara point runs west for about 500 varas, then north about 75° west about 1000 varas.)

Thence north 36 varas to top of bank set stake marked 36 x 2400, at 1600 varas top of sand hill, at 2901 varas fence, at 185 varas S. 85° 27′ W. of west post of a small gate.

July 9 (*Variation* 8° 32′ *E.*). Beginning at stake 3018 varas south and 24 varas S. 89° 08′ W. from S. E. corner of Paistle (point B on map).

Thence S. 89° 08′ W. 1930 varas to stake in fence, at 1960,½ varas fence (running N. 1° 20′ W.); thence S. 1° 20′ E. 1061 varas; thence S. 89° W. 22 varas to a cedar post eight inches in diameter in hole (down) said post is marked X LA PARA S. W. (Point Q on map, Cocke S. W. cor. La Parra).

Beginning in fence line 13¼ varas S. 89° W. of point of intersection of East line of Borrosas and south line of La Parra (point R. on map) said beginning point being N. 89° E. 1990¼ varas from S.W. corner of said La Parra, as surveyed by J. J. Cocke (point Q on map).

Thence N. 89° E. at 1350 varas sand ridge, at 1400 varas top of same, (C. S. 30° E.) at 2500 varas pass about 80 varas north of windmill, at 3500 varas pass through south side of mott of six trees, at 3590 varas top of sand hill, at 3700 varas set stake marked ≡.

126 *July* 11 (*Variation* 8° 32′ *E.*). Beginning at stake 3700 varas set on 10th.

Thence N. 89° E. at 3880 varas live oak 15 inches in diameter marked ≡ on north side, is three varas north of line, at 3960 varas a live oak 30 inches in diameter marked ≡ on south side, is 11¼ varas north of line, at 4013 varas leave scrub live oaks, at 6305 varas telephone line (C. N. 18¾° W.) at 6800 varas sand blow, at 7200 varas top of hill, at 7261 varas live oak 24 inches in diameter marked ≡ on south is 17 varas north of line. (This tree is at the S.W. point of what J. J. Cocke called in his field notes of the La Parra, the Tio Culos mott.)

At 7460 varas fence corner about 60 varas south, at 7860 varas road (C. S. 15° E.) at 8000 varas east end of Tio Culos mott bears north about 150 varas, at 8066 varas road (C. S. 10° E.) at 8111 varas north east end of Tio Culos bears N. 24° W. about 300

varas, at 8900 varas point on hill, from 9300 to 9550 varas in flat (road on east side) at 11,214 varas fence (C. N. 1° 27′ W.) at 12,300 varas scrub live oak, at 13,200 varas left it, at 14240 varas scrub live oak, at 14720 varas left scrub oak and entered sand hills, at 15,000 varas set stake marked ≡ in sand blow, at 15,500 varas set stake.

July 12 (Variation 8° 32′ E.) Beginning at stake set 15,500 varas on 11th. Thence N. 89° E. (same count) at 15,963 varas point on top of sand ridge, at 16451 varas stake four varas south of a live oak from which a very old double live oak, each about three feet in diameter, the south one forked about two feet above ground and the north one marked ≡ on north side, bears N. 38½° W. 358½ varas, (this is the most northerly tree in the Palmito mott) at 16,822 varas a live oak tree ⊔ on north side is three varas south of line, at 17,000 varas stake, at 17,500 varas foot of sand hill, at 18,525 varas left sand hill, at 19,405 varas windmill bears N. 76° 50′, at 20483 varas, same windmill bears N. 72° 33′ W. at 20,500 varas stake, at 20527 varas a point from which six rocks and cedar post in hole blown out by wind, cedar bears N. 6° 45′ E. 341 varas. The cedar post is marked XS / DAG / RC / IV This is the S. E. corner of La Parra grant, as called for in field notes of J. J. Cocke (Point S. on map).

(To run a line direct from the S. E. corner of the La Parra to its S.W. corner as surveyed by Cocke, will require a course of S. 88° 08′ W. and a distance of 22,517 varas. Said line will run just north of the double live oak on north of Palmito mott, but will run 122 varas north of the tree at the S. W. point of Tio Culos mott.)

June 20 (Variation 9° 19′ E.). Beginning at live oak stake (Point C. on map). Thence S. 89° 30′ W. at 151 varas pass 3 4/10 varas south of stake marked 15,506, set on June 17, at 518 varas large live oak 3 feet in diameter, marked fore and aft is four varas north of line, at 831 varas live oak 12 inches in diameter marked ≡ on south side is 2½ varas north of line, at 969 varas old trail or road, at 1558 varas old pine stake 1 4/10 varas north of line, at 1558 varas live oak marked ≡ on north side is 3/10 of vara south of line, at 1746 varas live oak 2 feet in diameter marked ≡ on south side is 2, 9/10 varas north of line, at 1752 varas live oak 12 inches in diameter marked ≡ on north side is 1, 5/10 varas north of line, at 2190 varas left timber, at 2200 varas edge of lake is south 50 varas at 2777 varas north end of station house at Miflin bears S. 62° W. at 2950 varas lagoon, at 3000 varas center of lagoon at 3945 varas road, at 3990 varas cedar post marked I X (said to be N. E. corner of Miflin Donation) bears N. 57½° E. 205 varas, at 4000 varas marked stake, at 4736 varas road (C. N. E.) at 5924 varas road (C. N. E.) at 6269 varas east fence of R. R. right of way at 6287 varas center of railroad track, at 6305 varas west fence of railroad right of way (course of railroad N. 6° W.) at 6382 varas

marked stake, at 6569 4/10 varas point 37 varas south of the S. W. corner of the Paistle as located by F. A. Blucher (Point E. on map).

(NOTE.—This corner I located by course and distance from his bearing tree now standing.)

At 6586 varas cross the east line of Survey No. 51 Central & Montgomery R. R. Co., said point of crossing said line being
128 1121.5 varas north of the S. E. corner of said survey No. 51.

(NOTE.)—The bearing tree for the S. E. corner of said survey No. 51 is still standing and from it I located the S. E. corner and its east line.

At 8550 varas marked stake, at 8554½ varas Kenedy's fence line, at 8564½ varas point.

Thence North 57 varas to cedar post about six inches in diameter and three feet high, said post is marked J. AB on north and Y G on south, a live oak nine inches in diameter marked $\frac{X}{X}$ the lower X cut deep in the wood, both marks appear to be about the same age, bears N. 65° 45′ E. 35½ varas, another L. O. two feet in diameter marked B bears S. 55° E. 86½ varas (point J on map).

Thence north ½° W. 53 varas to another cedar post about same size recently placed.

(NOTE 1.)—To run a direct line (Var. 8° 32′ E.) from Blucher's S. E. corner of the Paistle (point B on map) to his S. W. corner of same (point E. on map) required a course of S. 88° 58′ W. and distance 8615 7/10 varas.

(NOTE 2.)—To run a direct line (Var. 8° 32′ E.) from Blucher's S. E. corner of the Paistle (point B) to Cocke's S. E. corner of same (point C on map) required a course of S. 88° 43′ W. and distance of 2046 varas.

(NOTE 3.)—To run a direct line (Var. 8° 32′ E.) from Cocke's S. E. corner of the Paistle (point C) to his S. W. corner of same (point J) required a course of S. 89° 6′ W. and a distance of 8564½ varas.

(NOTE 4.)—To follow the marked line west (Var. 8° 32′ E.) from Cocke's S. E. corner of the Paistle requires a course of S. 88° 43′ W.

(NOTE 5.)—Found no marks on line between Blucher's S. E. corner of Paistle and Cocke's S. E. corner of same.

(NOTE 6.)—To run a line (Var. 8° 32′ E.) from Cocke's S. E. corner of the Paistle (point C on map) to his S. W. corner of
129 the La Parra (point Q on map) requires a course of S. 35′ E. distance of 4059.5 varas.

June 21 (*Variation* 9° 19′ *E.*). Beginning one vara S. 89° 30′ W. from stake set at 8550 (said point being 57 varas S. ½° E. and 14.5 varas N. 89½° E. from point J).

Thence S. 30′ E. (9 7/10 feet east of fence) 1127 varas junction of fence from west (C. S. 89° 15′ W.) searched for a common corner of railroad surveys 51, 52, 53, and 54 but found nothing, at 1192 varas large live oak marked K on west side and □ near the ground on east side, this □ is cut deep in the wood, at 2887 varas cedar

post five inches in diameter and 4½ feet high, marked — on east side and V on top, bears ten varas west at 2954 varas fence (C. N. 89° 40′ E.) at 2964 varas fence corner (C. S. 89° 20′ W.) a cypress post 6 x 6 — square, five feet high marked M. on east bears S. 89° 30′ W. 10 9/10 varas.

Thence S. 89° 20′ W. with fence at 2000 varas a fence coming from north (C. N. 10′ W.) a cedar post in said fence bears N. 10′ W. 78 varas; at 4009 varas another fence from north (C. N. 30′ W.) at 5400 varas west gate post, at 5417 3/10 varas fence (C. N. 9° 55′ W.) at 5424 varas another fence (S. 9° 15′ W.)

June 22 (*Variation* 9° 19′ *E.*). Began at stake 5424 set on 21st. Thence 89° 20′ W. at 5517 varas shield fence (C. N. E.) at 5526 varas a grave one varras south; at 5953 varas to fence (C. S. 47′ E.) point L on map; thence N. 47′ W. at 74¾ varas corner of same.

Thence S. 89° 8′ W. with fence at 1475 varas lagoon, at 1603 varas left same, at 1955 varas another lagoon or flat, at 2230 varas fence corner, at 2233 varas stake 3¾ varas south of post 6 x 6 inches and five feet high (point N on map).

Thence S. 31′ E. at 621 varas point, thence S. 49° 5′ W. at 100 varas opposite end of a lake said to be Tresquila, at 270 varas point.

July 23 (*Variation* 9° 19′ *E.*). Meandered same as follows,
130 viz: S. 82° 20′ W. 110 varas; N. 79 30′ W. 270 varas, N. 31° 15′ W. 70 varas, S. 83° 45′ W. 100 varas, N. 37° 30′ W. 160 varas, N. 2° 30′ E. 60 varas, S. 40° 30′ E. 150 varas, S. 66° E. 100 varas, N. 87° E. 50 varas, S. 59° E. 120 varas, N. 65° E. 90 varas, S. 45° E. 50 varas N. 42° E. 130 varas, N. 72° E. 100 varas, S. 87° 10′ E. at 40 varas east end of lake, at 170 varas point 621 in fence line.

(NOTE.)—This lake is fresh water and there is another dry lake about one half to three fourths of a mile S. 75° W. from west end of this lake. I found nothing at this second lake to indicate that it ever had any fence on it. The lake called Tresquila has on its south and north a number of quite old mesquite trees, some of them bearing old hacks, but I found no evidence of same having pens or corrals on it, except in two or three places on the south side the brush has grown as if an old fence around a small enclosure had at one time marked same.

Thence from stake 621 S. 31′ E. at 1122 varas north bank of salt lake, at 1164 varas center of same, at 1258 varas leave lake, at 1310 varas set stake in fence line (so marked).

Thence N. 89° 27′ E. at 1840 varas fence corner to south 68 varas, at 2235 varas fence, drove stake in fence line, (C. S. 47′ E.)

Thence S. 47′ E. with fence line 73¾ varas, corner of same (point M on map) from which a live oak 24 inches in diameter marked ≡ X on N. W. side (very old) bears S. 58° 30′ E. 607¾ varas, another tree marked on west side ≡ is east about 15 varas, thence N. 89° 30′ W. 395 varas to corner of fence (C. S. 20′ E.)

Thence S. 20′ E. with fence at 825 varas top of hill, at 375 varas flat, at 1175 varas out of flat, at 2870 to 3020 varas flat, at 3600 varas to 3800 varas scrub live oaks, at 3825 to 3850 varas flat, at

3900 to 4100 varas flat all run S. E. at 4450 center of flat, at 5511 varas pine stake, at 5539 varas to fence (C. N. 88° 46′ E.) (point P on map) at this point I hunted for bearing trees called for but found none, but found live oak and mesquite at distance and
131 course called for.

Thence N. 88° 46′ E. with fence at 342 varas west gate post at 2410 to 2440 varas old Brownsville road (C. about South).

Thence from corner of fence (point P) S. 88° 46′ W. with fence at 660 varas lagoon, at 940 varas left lagoon, at 1250 varas lagoon about 500 varas north, at 1748 varas to point where new fence runs north (point C. on map).

July 6 (*Variation* 8° 32′ *E.*). Beginning at stake marked 1310 set June 22, south of Tresquila and salt lake, said beginning point being 40 feet six inches east of said stake 1310.

Thence S. 1° 11′ E. at 650 varas lake, at 770 varas left it; at 3750 varas top of sand hill; at 4766 varas point from which a double live oak twenty inches in diameter marked O. on north (very old) bears S. 61½ E. 41½ varas, a live oak twenty inches in diameter marked X on south bears S. 73° E. 81 varas (this mark is recent, say about eight or ten years old) at 5536 varas a cypress post 8 x 8 inches, about 3½ feet high, is twelve varas west of fence, at 5583 varas a cedar post six inches in diameter about four feet high is 284½ varas west of fence and 290¾ varas west of line, at 5592 varas fence at a point 6¼ varas east of point of fence corner (point O on map).

(NOTE.)—There is a dry lagoon about 125 varas wide 383 varas south, which is a continuation of the one we crossed east of point O.

June 24 (*Variation* 9° 19′ *E.*). Beginning at corner of fence No. 1 (point K on map).

Thence N. 40′ W. 10 varas to another fence.

Thence N. 89° 40′ E. at 600 varas high ground, at 850 to 950 varas lagoon to flat, at 1657 varas east gate post; at 1987 varas drove stake in fence line, station house at Mifflin bears N. 20° E. The Encino del Rey bears N. 13° 45′ E.

Thence N. 30′ W. at 1095 to 1550 varas brush at 1777 varas Encino del Rey bears S. 89° 15′ E. 2002½ varas pass fifteen varas east of a live oak marked X on south, at 2966 varas cross line ran by me west from S. E. corner of Paistle 6569 2/3 varas S. 89°
132 30′ W. of said S. E. corner of the Pa*i*tle as placed by Cocke (point C on map), at 3003 varas Blucher's S. W. corner of the Pa*i*tle, as patented from which a live oak thirty inches in diameter marked X on east and west bears S. 61° 30′ E. 715 varas, Encino del Rey 36 inches in diameter and has old marks on it, may be an X, bears S. 20° 30′ E. (I found no sign of stake or stones at this point) at 3689 varas searched for corner, found none, at 5494 varas hunted for corner and found none, at 5857 varas west rail of railroad (C. N. 6° 20′ W.) at 6150 varas top of sand ridge, at 6200 to 6300 varas lagoon or flat, at 7319 varas hunted for corner but found none; at 9208 varas a hill; at 9390 varas drove stake.

Thence S. 89° 30′ W. at 353½ varas west rail of railroad, at 400 varas drove stake on sand hill; at 649 varas point 31 varas south of a

live oak 3 feet in diameter marked = on south (old and into the dead wood and partly overgrown). This is the bearing tree to S. E. corner of survey 59, hence my line is 18 varas too far east.

June 25 (*Variation* 9° 19′ *E.*). Beginning at stake 9390 set on 24th.

Thense S. 89° 30′ W. 18 varas.

Thence N. 30′ W. 22 varas, where set stake marked 9412 (and took up stake 9390) near an old post now down.

Thence N. 30′ W. (new count) at five varas cross present road to Santa Rosa; at 200 varas top of hill; at 465 to 680 varas new sand hills; at 750 to 825 varas lagoon; at 1325 to 1500 varas flat; at 1880 varas set stake *on* varra east of an old post marked XXX; said post is down, N. E. corner of survey 59, a cedar post marked I X on east—on west bears S. 34° 15′ W. 285 varas, at 2325 to 2400 varas fresh water lagoon; at 2600 varas top of hill; at 3757 varas stake; hunted for corner but found none,—the S. E. corner of Hirsh and Olive Street of Sarita bears N. 25° 50′ W. 21 3/10 varas (said street runs N. 19′ E.), at 3980 to 4050 varas lagoon in Sarita
133 park filled with fresh water from artesian well at Sarita; at 4500 varas hunted for corner 236 varas to west but found none; at 6000 to 6050 varas small lagoon, at 6821 varas a cedar post marked IX— bears west 58 9/10 varas, at 6927 varas set stake and ran S. 89½° W. 236 varas to hunt corner but found none, at 303 8/10 varas center of railroad (C. N. 10′ W.) Began back at stake 6927, thence N. 30′ W. at 7220 varas top of hill; at 8760 to 9000 varas old road running S. E.; at 10,960 varas set stake; at 11,060 varas set stake seven varas from water's edge on Olmos, (point G on map).

Thence up the Olmos as follows:—S. 52° W. 180 varas; S. 74° W. 150 varas to stake under west side of railroad bridge.

Brgan back at stake 11,060 varas at water's edge. Thence down the Olmus as follows:—viz:—N. 35° E. 260 varas. N. 60° 10′ E. 130 varas. S. 66° 55′ E. 100 varas. S. 31° E. 107 varas to point (Point F on map).

(NOTE.)—The above line was run N. 30′ W. with a variation of 9° 19′ E. hence to run said line with a variation of 8° 32′ will make the line run N. 1° 17′ W. and I have so platted same on the map.

(NOTE.)—In constructing the west line of the Paistle as patented, I placed said line north and south because that runs parallel with its east line and gives the same distance east and west on its north end that it has on its south end.

June 13 (*Variation* 8° 32′ *E.*). The meanders of the Olmus from points A. to Z. on map, are as follows:—

Beginning at stake at point A. Thence up the Olmus Creek as follows:—N. 29° 58′ W. 50 varas, N. 64° 43′ W. 800 varas, N. 76° 28′ W. 300 varas, N. 74° 28′ W. 540 varas, N. 4° 58′ W. 640 varas, S. 84° 58′ E. 111 varas, N. 5° 2′ E. 10 varas, N. 46° W. 100 varas, S. 81° 2′ W. 427 varas, N. 52° 43′ W. at 654 varas point D on map, at 1058 varas point.

June 26.—Thence N. 77° 17′ W. 370 varas, N. 31° 17′ W. 650

varas, N. 72° 47′ 150 varas, N. 67° 43′ W. 500 varas, S. 34° 13′ W. 590 varas, N. 65° 47′ W. 2000 varas, S. 83° 13′ W. 400
134 varas, S. 71° 58′ W. 750 varas, S. 86° 28′ W. 300 varas, S. 42° 13′ W. 310 varas, S. 13° 28′ W. 420 varas, S. 1° 28′ W. 170 varas, S. 21° 58′ W. 540 varas, S. 59° 58′ W. 160 varas, N. 73° 2′ W. 170 varas, N. 53° 32′ W. 227 varas to an old mesquite post. Thence N. 31° 47′ W. at 33 varas pass N. W. corner of El Paistle (point F on map) at 140 varas point N. 67° 42′ W. 100 varas, S. 59° 23′ W. 130 varas, S. 34° 13′ W. 260 varas N. E. corner of Section No. 84, G. C. & S. F. R. R. Co. (point G. on map). Thence S. 51° 13′ W. 180 varas, S. 73° 13′ W. 150 varas to a stake under the west side of railroad bridge.

June 27. Thence N. 69° 47′ W. 160 varas, N. 44° 2′ W. 220 varas, N. 79° 32′ W. 200 varas, N. 87° 58′ W. 170 varas, N. 86° 2′ W. 230 varas to Paso Peidra. Thence S. 60° 58′ W. 130 varas opposite mouth of Salt Creek, S. 37° 58′ W. 150 varas, S. 27° 58′ W. 200 varas, S. 18° 32′ E. 100 varas, S. 33° 32′ E. 200 varas, S. 20° 32′ E. 370 varas, S. 7° 58′ W. 490 varas, S. 3° 17′ E. 400 varas, S. 7° 43′ W. 220 varas, S. 18° 43′ W. 250 varas, S. 50° 13′ W. 110 varas, S. 70° 13′ W. 200 varas, N. 75° 47′ W. 160 varas, S. 59° 58′ W. 168 varas stake 56 varas north of corner of fence. Thence S. 42° 27′ W. at 46 cross fence which runs across creek, at 65 varas a large rock (Penascal) the N. W. corner of Pasitle as surveyed by J. J. Cocke (point H. on map) at 150 varas point, S. 22° 5′ W. 120 varas.

July 22. Thence S. 52° 50′ W. 120 varas, S. 71° 10′ W. 370 varas, N. 84° 5′ W. 220 varas, S. 82° 6′ W. 200 varas, S. 55° 35′ W. at 76¾ varas stake from which a mesquite nine inches in diameter marked X on the north bank of the Olmos bears N. 4° W. 66½ varas, this is the bearing of survey No. 1, C. C. S. D. R. G. & N. G. R. R. Co., at 450 varas stake. Thence S. 51° 25′ W. 210 varas, N. 89° 35′ W. 220 varas, S. 78° W. 280 varas, S. 60° 42′ W. 110 varas drove stake from which a square mesquite post on high bank north side of Olmus marked XXVII bears N. 6¾° W. 48½ varas, this mesquite post is the S. W. corner of the Grullo Grant, S. 43° 16′ W. 90 varas, S. 33° 26′ W. 230 varas, N. 73° 4′ W. 510 varas, N. 4½° W. 250 varas, N. 14° W. 120
135 varas, N. 53½° W. 200 varas, N. 58½° W. 270 varas, West 343½ varas, N. 44½° W. 450 varas, N. 73½° W. 110 varas, S. 34° W. 70 varas, S. 20° W. 280 varas, S. 50° E. 270 varas, S. 15¼° E. 250 varas, S. 35¾° W. 500 varas, S. 80½° W. 200 varas, N. 51° E. 130 varas, N. 31½° E. 125 varas, N. 9° W. 60 varas, N. 54° W. 110 varas, N. 65¼° W. 106 varas, S. 73¾° W. 130 varas, S. 59½° W. 110 varas, S. 46° W. 300 varas, S. 31½° W. 150 varas, S. 46° W. 341¼ varas, S. 52° 20′ W. 214 varas to a stake marked by me 14400 (point W on map). Thence S. 89° 20′ W. at 50 varas old road coming down north bank of creek, at 100 varas old road leaves creek on south bank, at 167 varas another old road, at 300 varas point. Thence N. 6° 55′ W. 275 varas, S. 70° 5′

W. 170 varas, N. 86° 55′ W. at 53 varas cross east fence of lane, at 72 varas west fence, at 330 varas point, S. 78° 50′ W. 350 varas, S. 54° 30′ W. 100 varas, S. 25° W. 330 varas, S. 54° W. 720 varas, N. 54° 30′ W. 330 varas, N. 25° W. 220 varas, N. 1° W. 160 varas, N. 79° 30′ W. 70 varas, N. 2° W. 121 varas, S. 88° W. 100 varas, S. 66° 30′ W. at 106 varas point where Cocke's line for east line of Santa Rosa de Arriba strikes the Olmos Creek.

(NOTE.)—This point where said line strikes the creek is fixed by calculation from the point where he calls for iron pump stock 734 varas south of same, called for in Cocke & Blucher's report, as I found nothing to indicate the exact place.

July 26. At 314 varas point. Thence S. 77° 30′ W. 143 varas, S. 56° W. 80 varas, S. 13° W. 69 varas, S. 87° 45′ W. 45 varas, N. 34° 45′ W. 200 varas N. 3° 45′ W. 235 varas high bank, N. 45° 45′ W. 160 varas high bluff, 18 to 25 feet high, S. 73° 30′ W. 145 varas S. 37° 15′ W. 430 varas, S. 47° 15′ W. 250 varas, N. 89° 30′ W. 60 varas, N. 53° 45′ W. 540 varas, N. 85° 45′ W. 270 varas, S. 82° W. 180 varas, S. 37° 30′ W. at 75 varas old road and a ravine to the right at 250 varas point, S. 54° W. 160 varas, S. 28° W. 150 varas, S. 79° W. 149 varas, N. 77° W. at 15 varas ravine to left at 106 varas fence course N. 16½° W. at 200 varas old road, at 136 358½ varas stake so marked ′ , N. 25° 15′ W. at 40 varas Brownsville road at 180 varas point, N. 12° 30′ E. 193 varas, N. 21° W. 243 varas, N. 70° W. 101 varas Mrs. Bettie McCullum's house bears N. 68° W., N. 28° 15′ W. 80 varas, S. 77° 30′ W. 71 varas, S. 29° 45′ W. 150 varas, S. 51° W. 171 varas Mrs. Bettie McCullum's house bears N. 23¾° W., S. 8° 45′ W. 250 varas, S. 21° 30′ W. 297 varas, ravine to the left from which the waters of an artesian well runs into the Olmos, Mrs. McCullum's house bears N. 4° W., artesian well bears S. 51¼° W., N. 80° 30′ W. 99 varas, N. 51° 30′ W. 112 varas, S. 87° 30′ W. 617 varas, N. 64° W. 320 varas, S. 68° 30′ W. at 70 varas road and ravine to right, at 230 varas point.

July 27. Thence S. 35° 15′ W. 86 varas, S. 13° 15′ E. 220 varas, artesian well bears S. 80¾° E. house bears N. 41° W., S. 45° W. at 20 varas over bluff, at 100 varas point end of ravine, S. 74° W. 330 varas, N. 73° 45′ W. 320 varas, N. 86° 45′ W. 160 varas cow trail or crossing S. 84° 45′ W. 150 varas, S. 39° 45′ W. 340 varas, S. 67° 45′ W. 270 varas house No. 2 bears N. 23¾° E. S. 87° 15′ W. 430 varas, N. 45° 15′ W. 240 varas point in creek bed, S. 58° 45′ W. 100 varas, S. 10° W. 175 varas opposite mouth of Paisano Creek (course of creek bears for ¼ miles up S. 75° W.), S. 3° E. 150 varas, S. 19° W. 165 varas, S. 3° E. 287 varas under bluff, S. 39° 15′ W. 240 varas, S. 20° 45′ W. 230 varas on high bank, S. 52° 15′ W. 110 varas, S. 88° W. 155 varas stake marked VIII from which a mesquite bears S. 8¾° E. 48 varas, S. 32° W. 105 varas, S. 42° 30′ E. 160 varas, S. 83° E. 125 varas, S. 15° 30′ E. 183 varas, S. 13° 30′ W. 180 varas, S. 54° 45′ W. 150 varas, N. 64° 15′ W. 180 varas, S. 85° 45′ W. 62 varas, S. 53° 15′ W. 77 varas, S. 28° 45′ W. 290 varas, S. 46° E. 200 varas point just under top of bank, S. 22° 15′ E. 210 varas top of bluff, S. 35° 15′ W. 270 varas

top of bank N. 74° 30′ W. 130 varas top of bank, N. 31° 45′ W. 310 varas along bluff, N. 76° 15′ W. 82 varas flag on top of Salto Hill bears N. 66° W., 87 15′ W. at 95 varas point where line running south from a point 5000 varas east of Purgatory Hill strikes the Olmos (point I on map) at 100 varas flag on Salto Hill bears
137 N. 35° 20′ W. S. 24° W. 130 varas, S. 6° W. 190 varas, flag on Salto hill bears N. 38½° W., S. 61° 45′ W. at 115 varas creek bed, the lower rock of Salto, at 196 varas the upper rock of Salto, at 206 varas point.

July 28. Thence N. 66° 30′ W. 195 varas, N. 74° 45′ W. 230 varas, S. 14° 15′ W. at 116 varas fence (course S. 11½° E.) at 320 varas stake VII from which Salto Hill bears N. 42¾ E., this point is at a deep hole in bend of Creek, S. 82° 15′ W. 180 varas, stake VIII, S. 61. 30′ W. 178 varas stake IX, N. 54° 30′ W. at 250 varas, at 168 8/10 varas (point II on map) where east line of El Tule Grant will run south from Olmos if said Grant's N. W. corner is located at Purgatory Hill, Thence S. 76° 30′ W. 438 varas, N. 86° 45′ W. 329 varas stake XI, N. 54° 45′ W. at 300 varas hole of water and rock running across stream, rock soft and continues up stream for about 50 varas, at 360 varas stake 1 ten varas from bank, S. 38° W. 460 varas stake II immediately under bluff bank, N. 70° at 90½ varas point where the east line of the Tule, with its N. W. corner located at the N. E. corner of the Loma Blanca will strike the Olmos (point X on map) said point is 80 varas south of an old post marked = very old, from which said old mesquite post a very old mesquite tree bears S. 4¼° E. 43 varas, said tree is marked ≡ on north side, Salto Hill bears N. 70° E., at 200 varas point stake marked ≡. Thence N. 41° 30′ W. 220 varas to point on North side of Creek bed, from which a mesquite post 15 inches in diameter four feet high on the south bank of the creek, no marks, bears S. 76½° W. 72 varas (this post appears to have been set some three or four years ago), N. 79° 30′ W. 250 varas stake IV on north side of bed of Creek. Thence S. 67° 45′ W. 304½ varas to an old mesquite post 14 x 14 inches, now almost rotted and down, marked D R F, from which a three pronged mesquite tree thirty inches in diameter at the ground, one prong cut off, the west prong 16 inches in diameter and the east one twelve inches in diameter, the west prong marked (X) east prong marked A. G. or A. C., the new wood has grown over the C or G it cannot be distinguished, bears
138 N. 11° 20′ E. 132 varas, said tree is down in a gully.

(NOTE.)—I placed a pile of rocks where the D. R. F. post stood.

July 29. Thence N. 79° 15′ W. at 180 varas soft rock running across the creek and continuing up the creek for fifty varas, at 344 varas point, S. 51° W. 274 varas, N. 80° 15′ W. 140 varas, N. 41° 45′ W. at 28 varas point where east line of Tule South of the Olmos strikes same (point Y on map) at 125 varas cut off, at 184 varas stake marked ≡ from which a post 15 inches in diameter and 4½ feet high, no marks, bears S. 60° 45′ W. 53 varas. Thence N. 84° W. 159 varas, S. 29° 30′ W. at 50 varas cut off comes back into

creek, at 140 varas point, S. 80° W. 154 varas stake V north of creek, S. 45° 30′ W. 350 varas stake VI south side of creek, S. 37° W. 210 varas stake VIII, N. 58° 15′ W. 260 varas stake IX in bed of creek south side. N. 62° 30′ W. 394 varas, N. 87° 45′ W. 570½ varas (point Z on map) point 5533, N. 18′ W. of the S. tree at Charco and Tule.

June 27 (*Variation* 9- 19′). Beginning at mesquite post on Olmus 56 varas north of fence corner, said post being N. 42° 27′ E. 65 varas from Penescol rock (point H on map).

Thence S. 0° 30′ E. at 56 varas fence corner (C. S. 30′ E.) continue on with fence, same course and count, at 154½ varas pass 42½ varas east of an old mesquite post (no marks) at 437 varas Kenedy's Creek fence (course down creek) at about 975 varas pass 39 2/10 varas of a square cypress post marked M on east, K on west, at 18–72½ varas pass 35 5/10 varas east of cypress post marked M on east, K on west, at 3789 varas pass 28 5/10 varas east of cypress post marked M. on east, K on west, at 5697½ varas pass 21 1/10 varas east of cypress post marked M on east, K on west, at 6150 to 6300 varas flat, at 6653 varas pass 17 5/10 varas east of cypress post marked M on east, K on west at 6843 varas drove stake, at 6850 varas pass six varas east of post marked M on east, K on west, at 7056 varas pass 15 6/10 varas east of a cedar post marked IX, at 7575 varas a ridge, at 7600 to 7850 varas flat, at 8565 7/10 varas south gate post on road to Santa Rosa, a cypress post marked
139 M on east K on west is 12 2/10 varas west, at 8720 varas set stake in fence line. Thence N. 89½° E. 225 varas drove stake marked 8720 x 225. Hunted for corner of survey No. 59, but found nothing.

June 28 (*Variation* 9° 19′). Began at stake 8720, set on 27th. Thence S. 30′ E. (same count) at 9225 to 9300 varas sand blow, at 9500 varas to 9650 varas flat, at 9527 varas cypress post marked M on east K on west, 10 varas west, at 10504 varas pass eight varas east of cypress post marked M on east, K on west, at 10791 varas drove stake. Thence N. 89° 30′ E. 234 varas hunted for S. W. corner of Survey No. 58 but found none.

Began back at stake 10791. Thence S. 30′ E. at 10828 varas a fence from west (C. S. 89° 30′ W.) at 11,000 varas Santa Rosa road (C. N. 80° 45′ W.) at 11,095 varas pass 6½ varas east of large mesquite post, at 11,300 varas to 11,600 varas scrub mesquite, at 11,457 varas pass 6¾ varas east of cypress post marked M on east, K on west, at 12,426 varas pass 6 1/10 varas east of cypress post marked M on east, K on west, at 12,658 varas a fence from west (C. S. 89° 30′ W.) Mr. Tindell's house bears S. 88½° W. at 13,392 varas pass seven varas east of post marked M on east, K on west at 13,392 varas Mr. Tindell's house bears N. 79° 15′ W. at 14,336 varas cypress post marked M on east, K on west, eight varas west, at 14,487½ varas pass a fence (C. S. 89½° W.) at 14,489 7/10 varas point from which a live oak marked IX on east and ≡ on north bears west 398½ varas.

(NOTE.)—This is the bearing tree called for in patent at N. W.

corner of survey No. 51 Central & Montgomery R. R. Co., as bearing west 486 varas.

At 15,085 varas pass 8 9/10 varas east of a cedar post marked IX (supposed N. W. corner of Miflin Donation), at 15,137 varas to a point ten varas east of post marked J A B on north, Y. G. on south (point J on map).

(NOTE.)—To run a direct line, with variation 8° 32′ E. from the rock on Olmos (point H on map) to the J A B–Y G post (point J on map) requires a course of S. 1° 25′ E. and a distance of
140 15,089 varas, and I so show same on map.

July 16 (*Variation* 8° 32′ *E.*). Beginning at corner of old fence said corner being 1384¾ varas N. 1° 34′ W. from S. E. corner of Santa Rosa as surveyed by F. A. Blucher in 1859, said S. E. corner is point M on map.

Thence N. 1° 34′ W. at 474 varas stage road (C. about N. 30° W.) at 1738 varas young live oak timber, at 1950 varas mott of old live oaks, I hunted carefully for marks but found none, at 2168 varas point.

Thence N. 88° 26′ E. at 96 varas point two varas east of live oak 24 inches in diameter marked ≡ on north, old, at 21 varas south of said tree is another tree 20 inches in diameter marked ≡ very old.

(NOTE.)—To run a direct line by these trees to S. E. corner of said Santa Rosa (point M on map) requires a north and south line and a distance of 3551 4/10 varas, and I so represent same on map.

July 17 (*Variation* 8° 32′ *E.*). Beginning at stake set on 16th two varas east of live oak 24 inches in diameter, said stake being 3551 4/10 varas north from S. E. corner of Santa Rosa (Point M on map).

Thence N. 12′ W. at 1650 varas drove stake on supposed south line of Section 71 at 1900 varas drove stake at 2000 varas drove stake on ridge in mott of large old live oaks, none marked.

July 18, (*Variation* 8° 32′ *E.*). Thence N. 12′ W. (from stake 2000) same count, at 2790 varas old live oak timber or mott, at 2839 varas live oak, twelve inches in diameter marked $\overline{O}$ on west side, ⬭ on east and south sides, at 2878 varas live oak 4¼ varas east of line, fifteen inches in diameter and marked — on north, at 2949 varas live oak three feet in diameter marked ≡ very old, one varra west of line, this tree is on north side of mott — at 3166 varas a large live oak 36 inches in diameter near corner of fence bears E.
3½ varas—this tree is burnt on east side and has recently
141 been cut on south and north, there is also a mark (≡) on
west side,—at 3275 varas opposite fence corner 8½ varas to east (S. W. corner of Tindell's fence on Section No. 72).

Thence S. 88° 45′ W. 185 varas to a mesquite stake (which appears to have been placed about one year) from which a live oak five inches in diameter marked ≡ on north side bears S. 73¼° E. 5½ varas, another live oak eight inches in diameter marked ≡

on S. W. bears N. 66¾° E. 6½ varas, another live oak eight inches in diameter marked ≡ bears N. 49° E. 4½ varas.

Began back at point 3275 varas on line running N. 12° W. Thence N. 12′ W. (same count) at 3570 varas a large mesquite tree in fence line, at 3952 varas point in fence running N. 88° 50′ W.

Thence N. 88° 50′ W. 201 varas to line run by Messrs. Cocke and Blucher.

Thence N. 1° 34′ W. with said line 187 varas a point seven varas east of an old live oak about twenty-four inches in diameter. I examined this tree very carefully for surveyor's marks, but found none. The tree has been peeled on the north side down to within six inches of the ground and up as high as four feet. Several other trees near by have been peeled in a similar manner. These trees were evidently peeled some twenty or twenty-five years ago, as the aftergrowth is about four or five inches thick.

July 20 (*Variation* 8° 32′ *E.*). Beginning at a point in fence where Cocke and Blucher's line crossed same, said point being 187 varas S. 1° 34′ E. from live oak above described.

Thence N. 88° 50′ W. with fence at 390 varas sand below, at 475 varas left same, at 602 varas a point 14½ varas south of an

o
old live oak burnt on north side and marked X on south, (the o over the X is not an axe mark). The north side of the tree has been peeled off from six inches above the ground up to 5½ feet, some twenty or twenty five years ago.

Thence S. 73° 30′ W. at 236 varas a very large spreading live oak tree five varas in circumference with axe marks as if peeled, but found no surveyor's marks.

o
142 Began again at tree marked X at end of 602 varas course (S. 88° 50′ W.).

Thence N. 14° E. 185 varas to point on sand ridge.

Thence N. 35° W. 154 varas to a mesquite tree with mistletoe and short rope in top of same. This tree is about fifty varas west of two live oaks trees and 75 varas east of four or five other live oaks, none of which have axe marks on them.

There is no evidence of a house or jacal, or any notice whatever, no broken utensils or anything to indicate that a habitation had ever been here. There are some two or three tree stumps on a radius of fifty varas.

Began back at point, stake 3952, on line running N. 12′ W., at point where fence runs N. 88° 50′ W.

Thence N. 12′ W. (same count) at 4261 varas Tindall's fence across the lane turns S. about 75° E. at 4444 varas south side of lagoon or cayo, dry, at 4559 varas left same, at 5028 varas stake on south bank of lake, at 5172 varas north side of lake. This lake has water in it and is 140 varas wide.

July 19 (*Variation* 8° 32′ *E.*). Beginning 39 varas south of stake 5172. Thence S. 71° W. 98 varas to old stake in bunch of prickley pear near edge of lagoon.

Thence S. 89° 30′ W. at 78 varas another old stake, at 113 varas a new stake set about one year ago.

Thence from said new stake N. 89° 30′ E. at 282 varas left lagoon, at 350 varas cross road (course north and south) at 489 varas cross fence, at 550 varas cross south fence (C. N. 71½° E.) at 1553½ varas intersect a line apparently cut out about one year ago. Thence south with said line 120 varas stake.

Began at stake 5172 on north side of lagoon. Thence N. 12′ W. (same count) at 5500 varas cross fence (C. about N. 5° W.) at 5760 varas corner on east of land about 20 varas east (one fence runs S. 36° E. the other about north), at 5789 varas to fence that runs across lane four varas west of gate (fence to west runs N. 82° W.) at 5919 varas point in center of lane from which storage
143 house bears N. 34¾° W. stable bears S. 78½° E. at 6084 varas stake between two gates, one on east and other on west fence of lane, at 6178 5/10 varas pass one and three fourths varas east of a cast iron pipe set in the ground at 6325 5/10 varas stake in lane 28¾ varas east of a large mesquite post set 1¾ varas west of a fence (point 1 on map).

(NOTE.)—This is claimed by D. R. Fant for the N. W. corner of the small square or inset to the Santa Rosa grant.

Thence from said mesquite post east at 1¾ varas cross west fence of lane, at 28¾ varas stake 6325 5/10 varas on line N. 12′ W. at 38¾ varas cross east fence of lane at 1238¾ varas a mowing machine wheel (point *h* on map) claimed by D. R. Fant as the N. E. corner of said inset.

Thence N. 89° 06′ E. 479 varas to north gate post.

Thence N. 89° E. 306 varas. Thence S. 30′ E. 550 varas. Thence S. 45° E. 500 varas. Thence South 265 varas. Thence N. 89° 30′ E. 192 varas to a mesquite post shown me by Capt. J. J. Dix, as the S. E. corner of survey No. 73. Thence from said stake S. 89° 30′ W. at 360 varas a live oak tree 24 inches in diameter, marked ≡O≡ on east side, is 3½ varas north.

(NOTE.)—If this tree is the bearing called for in the field notes of surveys 65 and 72, which no doubt it is, the stake is 55 varas too far east for the S. E. corner of Section 73.

July 21 (*Variation* 8° 32′ *E.*). Beginning at stake 6325½ in lane.

Thence N. 12′ W. (same count) at 6500 varas stake, at 7000 varas gate in east fence (at this point the north line of horse pasture coming from east joins the east fence of lane) at 7050 varas edge of lagoon, at 7150 varas left same (the present water line is fifteen varas to right the lake runs N. 80° E. for about 700 or 800 varas and is from 75 to 150 varas wide), at 7332 varas a mesquite six inches in diameter on hill bears six inches to right of line, at 7399½ varas another mesquite six inches in diameter is one foot
144 west of line at 7500 varas drove stake at 8000 varas drove stake, at 8093 varas fence coming from west (C. S. 84° W.) (at this point both fences of the lane change course and run N. 6° 15′ W.) at 8282 varas cross east fence, at 8500 varas stake, at 9000 varas set stake at 9500 varas set stake, at 9679 varas wind mill bears

N. 82° 45′ W. at 10,000 varas drove stake, at 10,500 varas drove stake, at 10,965 varas drove stake, hunted for N. W. corner of Section 77 but found nothing,—at 11,000 varas drove stake, at 11,175 varas wind mill bears S. 69° 45′ W., at 12,343 varas hunted for N. W. corner of section 80 but found nothing, at 12,397 varas a mesquite post about six inches high (balance burned) marked VIII, reading down, bears West 76 varas, at 12,500 varas drove stake.

July 22 (*Variation* 8° 32′ *E.*). Thence from stake 12500 N. 12′ W. at 13,000 varas drove stake, at 13,500 varas drove stake, at 13,897 varas hunted for N. W. corner of section 81 but found nothing at 14,000 varas drove stake, at 14,337 varas small pile of stone on high ground, no other rocks nearer than ten of twelve varas, at 14,352 varas an iron pump stock bears east 46¾ varas, at 14,380 varas drove stake about half way down bank of creek, at 14,400 varas drove stake (point W on map) on south edge of channel of Olmos Creek at 14,416 varas center of said creek channel.

(NOTE.)—There is an old road that comes down the north bank of creek fifty varas and runs up the creek and goes up the south bank about 75 or 100 varas above.

July 31 (*Variation* 8° 32′ *E.*). Beginning at stake on top of Purgatoria Hill, as near the summit as I can locate it, at any rate it cannot be more than fifteen or twenty varas out of place.

Thence west at 400 varas hunted for rock corner but found nothing, at 1057 varas a large monument (built of stone and mortar 2 x 2 at base and five feet high, said monument is tapering and at top is about 1 x 1 foot, is marked D R F Feb'ry 26, H. Burke, another rock called C R 20 x 20 x 20 inches, both standing at corner of fence) bears north 15½ varas (point IV on map) at 2750 varas Mrs. King's fence comes in from north, at 2900 varas
145 point, at 3404 varas fence post or post marked ≡ in fence on west side of channel of small branch.

Beginning at point on east bank of said small branch and two varas east of post at 3404 varas. Thence east 100 varas drove stake in fence line, at 200 varas an old post or stake marked ≡ on north side in fence line is one vara south of line.

Thence South at 150 varas crossed channel of said creek or branch (C. about S. 30° E.) at 2625 varas center of lagoon, at 3051 varas center of another lagoon, at 4720 varas draw, at 5705 varas north bank near east end, at 6000 varas lagoon about 60 varas east, at 6531 varas pass 135 varas west of a post near Barranca Blanco, at 6570 varas lagoon, at 6605 varas channel of Olmos Creek at a point 30 varas below an old dam at 6620 varas stake on South bank, at 7070 to 7130 varas lagoon, at 7565 varas drove stake so marked.

Aug. 1 (*Variation* 8° 32′ *E.*). Beginning at stake 7565 set July 31. Thence south (same count) at 8590 varas an old post, apparently an old fence post, bears east nine varas, at 9610 varas road from Falfurias to Monta Negro, at 11,300 varas small branch (C. about S. 75° E.) at 12,000 varas north side of lagoon, at 12,100 varas left same, at 12,310 varas drove stake on ridge about 100 varas S. 15° E. of small mott, at 13,000 varas stake so marked, at 13,218 varas point.

Thence east 206 8/10 varas to point from which a live oak 36 inches in diameter marked + on south and ≡ on east side high up, bears N. 2° 48′ W. 100 varas, a live oak thirty inches in diameter marked + on south, ≡ on west side, bears N. 12° E. 99 varas, being the bearing tree called for at S. W. corner of the Tule grant.

(NOTE.)—To run a line from the bearing tree at S. W. corner of Tule through the Barranca Blanco, will require a course of N. 48′ W., and as the north line calls to run at right angles to the west line, I have so plotted said survey on map with lines running N. 48′ W. and N. 89- 12′ E. and run the north line over the stone
146 monument at S. W. corner of Paisano grant (point IV on map) the west line (from point VI to point V on map) being 13,192 varas long and the north line (from V to III on map) 5393 3/10 varas long.

Thence from S. W. corner of Tule (point VI on map) Variation 9° 20′ E. *east* (= N. 89 12′ E. with variation of 8° 32′) at 450 varas cross fence at 491 varas passed live oak 20 inches in diameter marked ≡ on south side (not very old) at 596 varas pass 8 1/10 caras north of live oak eight inches in diameter marked ≡ on north side, at 833¼ varas offset south (right angles) 24 varas.

Thence meander fence as follows:—S. 86° 48′ E. 240 varas, S. 87° 26′ E. 197.7 varas, S. 87° 33′ E. 450 varas, S. 88° 18′ E. (at 142 varas pass stake set July 30) 508 varas, S. 88° 48′ E. 89 varas, S. 88° 36′ E. 1000 varas.

Thence N. 48′ W. 141 varas to point.

(NOTE.)—This point, with Variation of 8° 32′ is N. 89° 12′ E. 3321 varas from S. W. corner of Tule grant (point VI on map).

Thence east N. 89° 12′ E. (with variation of 8° 32′) at 327 varas a live oak post six inches in diameter five feet high bears S. 48° E. 54 varas, from which post a live oak 18 inches in diameter marked X bears N. 62° 45′ W. 45 varas.

(NOTE.)—This post is the S. E. corner of the Tule grant as located by Mr. Hansan, so I was told. At 379 varas set stake, at 586 varas set stake (point VII on map).

Thence north (= N. 48′ W. with Variation of 8° 32′) at 1198 varas cross road (C. east and west) at 1650 varas and 3700 varas and 6500 varas drove stake.

August 3 (*Variation* 9° 20′ *E.*). Began at 6500 varas stake.

Thence continue same course and count 6890 varas square mesquite post 2½ x 2½ inches on south bank of Olmos Creek, from which a stake marked = (set at end of meander course, right, 48° 15′ = N. 80° 15′ E. 140 varas) set on Friday, July 29, bears N. 88° 30′ E. 18 3/10 varas (point Y on map).

Thence down the Olmos Creek with its meanders as fol-
147 lows:—N. 87° 42′ E. 18 3/10 varas, S. 80° 15′ E. 140 varas, N. 51° E. 274 varas, S. 79° 15′ E. 346 varas N. 67° 45′ E. 304 6/10 varas, S. 79° 30′ E. 250 varas, S. 41° 30′ E. 220 varas, S. 70° E. 110 varas to the Salto corner the Tule grant (point X on map).

Thence north (= N. 48′ W. with Variation 8° 32′) at 80 varas a

very old mesquite post from which a very old mesquite tree bears S. 4° 15′ E. 43 varas, Salto Hill bears N. 70° E.

Beginning at stake on Purgatoria Hill set July 31. Thence east (= N. 89° 12′ E. variation 8° 32′) at 1472 varas point 3½ varas south of fence corner, at 1492 varas cross fence (C. S. 75° E. for about one half mile then turns more east, the other fence runs N. 45° W. for about 125 varas and then runs back west to stone monument) at 1650 varas cross Paisanio Creek at 2100 varas set stake at 2214 varas point (point III on map) at 2217 varas stake (hunted for corner at both 2100 and 2217 varas points but found none) at 2794 varas corner of fence about 250 varas south (course of fence S. 10° 30′ E.) at 3693 varas fence comes in from south on course N. 4° 45′ W. and joins the other fence 250 varas south of line, at 4600 varas drove stake and hunted for corner but found none, at 5000 varas drove stake and hunted for corner but found nothing,—small lagoon about 75 varas N. 10° E. and another small lagoon about 150 varas N. 65° E. (point XIX on map).

Beginning back at stake 2100 (stake set Aug. 3).

Thence south (= S. 48′ with variation 8° 32′ E.) at 169 varas cross fence 11½ varas east of a mesquite post twenty inches high and eight inches in diameter, marked = on east side, about 500 varas small creek running from N. W. corner of Tule enters the Paisanio Creek about 200 varas to right at 730 varas cross Paisanio Creek (C. S. E.) at 2560 varas cross creek (C. about east) at 3228 varas drove stake at 4665 varas mesquite stake on east side of flat ridge at 5827 varas drove stake marked =, at 6221 varas set a square post 4 x 4 x 18 inches on north side of Olmos Creek 13 varas back from bank, at 6234 varas north bank of creek, at 6294 varas center of Creek bed, at 6318 varas point from which stake = set at end of meander course right 72 = N. 70° W. 200 varas, set on
148 July 28, bears east 11 8/10 varas.

Thence east (= 89° 12′ E. variation 8° 32′) at 110 varas point (point X on map, which is eighty varas south of old mesquite post.)

(NOTE.)—In surveying the west line of the Tule, I found it to be 13,198 varas, an excess of 4 4/10 varas to the 100 varas, and required a course of N. 48′ W. to run same. I have therefore, constructed said lines at right angles and parallel to same, and gave all lines same proportionate excess.

August 4 (*Variation* 9° 20′ *E.*). Beginning at stake 5827 set this morning on course S. 48° E.

Thence east (= N. 89° 12′ E., variation 8° 32′) at 2094 varas cross fence (C. S. 10° 45′ E.) at 2500 varas set stake in lagoon that bends around south side of Salto ridge and hill.

Thence south (= S. 48′ E.) at 140 varas left lagoon, at 155 varas drove stake on north bank of creek, at 205 varas center of creek bed, on meander line N. 66° 30′ W. 195 varas, 67 varas from its beginning.

Beginning back at stake 2500 in lagoon. Thence north (= N.

89° 12′ E. variation 8 32′) at 25 varas out of lagoon, at 237 varas west bank of Olmos Creek, at 260 varas east bank, at 400 varas stake.

Thence North (= 48° W. variation 8° 32′ E.) at 165 varas south bank of Olmos Creek, at 228 varas stake on north bank of Creek (Point I on map).

(NOTE.)—This point is where the east line of the Tule will strike the Olmos if its N. W. Corner is located at Purgatoria Hill.

July 30 (*Variation* 8 32′ *E.*). Beginning on the south bank of the Olmos, at a point 74 varas S. 87° 30′ E. from end of meander line N. 87° 30′ W. 630 varas, said beginning point being 14½ varas S. 87° 30′ E. of point Z on map.

Thence south at 783 to 830 varas lagoon, at 1158 varas small lagoon east of line, at 3533 varas drove stake, at 4253 varas
149 cross Falfurias and Monte Negra road (C. S. 70° E.) at 4917 varas stake from which a stake set by Messrs. Dix & Blucher for and is the N. E. corner of James Forrester Survey No. 5, bears N. 9° E. 11 2/10 varas, a mesquite tree (old) marked W. bears S. 87° 30′ E. 188½ varas, old live oak stump bears S. 50° W. 90¼ varas, at 5473 varas north side of Charco del Tule, at 5505 varas south bank of same, at 5533 varas a live oak tree about three feet in diameter marked $\int\int$ and perhaps C ten inches below the $\int\int$ but I think the lower mark is a worn cut. East of the tree about 15 or 20 varas is an old live oak fallen down and about half buried in ground, all the bark is off hence I could not discover any marks on same.

Thence south at 10 varas pass east of live oak thirty inches in diameter with blaze on east, at 450 varas live oak twenty inches in diameter marked ≡ on north is 16 9/10 varas, east of line, at 1008 5/10 varas live oak 30 inches in diameter marked ≡ on east side is 16 varas east of line, at 1420 varas drove stake in fence line.

August 5 (*Variation* 9° 20′ *E.*). Beginning 16 varas east of mesquite post in fence line. Thence south through live oak timber, glades and brush, at 504 6/10 varas drove stake.

August 6 (*Variation* 9° 20′ *E.*). Beginning at stake 504 6/10 varas set August 5.

Thence offset west 58 varas to Dix & Blucher's line to avoid brush.

Thence with said line S. 1° 55′ W. 850 varas point. Thence east 86 7/10 varas set stake. This stake is S. 48′ E. 1354 varas from our beginning point 16 varas west of stake in fence line.

Thence south at 1691 varas drove stake, at 1925 varas drove stake, at 2133 varas drove stake, at 2337½ varas drove stake in edge of thicket, at 2779 varas mesquite stake and out of some live oaks, at 3067 varas drove stake, at 3282 varas drove stake so marked, at 3478 varas Carymolla wind mill bears S. 68° 30′ W. at 3700 to 3820 varas swail (C. S. E.) at 3750 varas dry lagoon in
150 swail, at 4050 to 4150 varas cross west end of dry lagoon, at 5650 to 5750 varas cross swail (C. S. E.) at 6940 varas drove stake from which Blucher & Dix's stake for S. W. corner of Santa Rosa bears N. 86° 15′ W. 254 2/10 varas, Carymolla windmill

bears N. 55° 45′ W. wind mill at encino mocho mott bears S. 89° 45′ E. mesquite brush bears N. 49¾° W. scrub mesquite brush, broken down, bears S. 31° W. 40 varas.

(NOTE.)—This stake is 8360 varas south from ∫∫ tree at Charco del Tule.

August 13 (*Variation* 9° 20′ *E.*). Beginning at stake set on August 6, at 8360 varas from ∫∫ tree.

Thence South 252 varas stake X. Thence east at 1000 varas drove stake at 3429½ varas stake marked = 35 varas south of south trees in Encino Mocho mott (hunted for marked trees in this mott but found none, some of the trees are dead and down, others dead and dying, with quite a number still standing), at 5050 varas cross road (course about N. E.) at 5695 varas cross fence (C. N. 2° 30′ W.) at 6505 varas point from which wind mill bears N. 22° 45′ E. another wind mill behind mott bears S. 61° 15′ E. about one half mile, north side of timber where fence enters same bears S. 53° W. at 9179 varas opposite center of lagoon,—150 varas to the south,—(this lagoon is about 250 x 300 varas and almost circular), at 10,500 varas drove stake marked ≡ on ridge, from 11,650 varas to 11,825 varas cross flat (C. S. E.) at 11,905 varas drove stake ≡, at 13,246 varas drove stake V, at 14,918 7/10 varas Kennedy's new pasture fence at a point 7 6/10 varas north of stake 1310 set June 25, south of Salto and Tresquilla lakes.

(NOTE 1.)—To follow (with variation of 8° 32′ E) the marked line, south of the ∫∫ tree and pass over the N. E. corner of survey No. 5, as surveyed by F. A. Blucher, the locating surveyor, requires a course of S. 18′ E., and I so show same on map.

(NOTE 2.) To run a direct line (with variation of 8° 32′ E.) from the S. E. corner of Santa Rosa (point M on map) and
151 pass through Eninco Mocho mott, requires a course of 89° 48′ W. and a distance of 17210 varas, to point of intersection (point IX on map) of line S. 18′ E. from point Z on Olmos Creek, said point of intersection being 13,959 varas S. 18′ E. from Olmos Creek (point Z on map) and I have so mapped same.

(NOTE 3.)—If the west line of the Santa Rosa is fixed by the east line of the Tule (point Y to VII on map) and prolonged same course, viz:—S. 48′ E. to the south line of the Santa Rosa (point XI on map) said west line will strike said south line at a distance of 14,039 9/10 varas south of the Olmus Creek, at point Y, and at a distance of 2125 7/10 varas N. 89° 48′ E. from the S. W. corner of the Santa Rosa (point IX on map).

August 7 (*Variation* 9° 20′ *E.*). Beginning at stake 3282 2093 varas S. 89° 12′ W. of point XIII on map.

Thence west 403½ varas drove stake, at 785 7/10 varas passed two varas south of large spreading live oak two feet in diameter (no marks) at 1200 varas to 1300 varas crossed south end of lagoon,

at 1750 to 1850 varas lagoon just north of line, rock cropping out on east side of same, at 3535 5/10 varas stake, at 3835 5/10 varas stake in Zachuistle flat.

Thence north 2151 varas point.

Thence east 176½ varas to point where set stake marked X, from which a live oak 24 inches in diameter, with old axe marks on west, bears N. 68° 30′ E. 40 varas, a live oak 18 inches in diameter marked V bears N. 52° 45′ E. 64 varas.

Thence South 435 5/10 varas to a live oak stake, down (reset same) from which a live oak 27 inches in diameter marked H (old) bears N. 21° W. 160 varas, live oak 30 inches in diameter marked W. bears N. 30¼° E. 181 5/10 varas.

(NOTE.)—This is the S. W. corner of survey No. 5 in the name of James Forrester.

Thence North at 435 5/10 varas pass S. E. corner of James Forrester survey No. 6, at 586 5/10 varas pass 4⅘ varas east of
152 large live oak marked ≡ on east, at 592 5/10 varas pass two varas west of another lice oak 18 inches in diameter marked ≡ on west side, at 955 5/10 varas pass 1 4/10 varas west of a live oak 18 inches in diameter marked ≡ on west and what looks like a blaze on the south side. This is the tree that Blucher, the locating surveyor, calls to have marked as a line tree, at 2580 varas south from the N. W. corner of survey No. 5.

August 8 (*Variation* 9° 20′ *E.*). Began back at the S. E. corner of survey No. 6, in the name of James Forrester.

Thence west at 176 5/10 varas pass end of line run north 2151 varas August 7, at 229 7/10 varas to point.

Thence N. 57 W. at 1505 varas fence (C. north and south) small jacal bears S. 19° 15′ W. about 200 varas, at 1517 5/10 varas fence (course east and west) at 1683 4/10 varas another fence (course north and south) at 1685 varas cross road (C. about N. and S.) at 1765 varas point 21 varas from fence.

Thence N. 13° W. at 19 varas fence (C. N. and S.) at 178 varas another jacal bears S. 34° 15′ W. about 350 varas, at 374 varas point four varas south of fence (C. of fence N. 87° 30′ W.)

Thence from point 374 varas, N. 87° 30′ W. at 77 varas cross fence at gate (C. about S. 25° W.) at 269 varas point.

Thence N. 88° 30′ W. along gence at 660 varas prickley pear fence (C. about S. 87° W.) at 785 varas cross fence, at 833 varas cross another fence (just north of jacal which these fences enclose) and enter cotton field,—Loma Blanca Lake to right about 200 varas,—at 962 varas point in cotton field.

Evening, August 8 (*Variation* 9° 20′ —). Beginning at S. W. corner of Loma Blanca Grant known as Leso corner of Lindero. This point is at the junction of a fence from the west that joins a fence running north and south. The old rock which was here I did not find, but Mr. A. M. French, who was with me and who had surveyed the Loma Blanca several years ago, pointed out the
153 place where we began, and I have no doubt of its correctness.

Thence ran a meander line through Loma Blanca lake, as follows, viz:—

Thence S. 89° 40- E. 1323 4/10 varas, N. 69° 27′ E. 722 1/10 varas, S. 80° 33′ E. 1157 1/10 varas, S. 80° 17′ E. 1835 75/100 varas, S. 65° 17′ E. 243 75/100 varas, N. 57° 23′ E. at 320 6/10 varas end of course N. 88° 30′ W. 962 varas run this morning.

(NOTE.)—The connection made in my survey from the S. E. corner of the Loma Blanca (point VI on map) to its S. W. corner (point XVIII on map) makes the length of said south line 10,253 varas and a course of N. 88° 42′ W. (variation 8° 32′) and I so show same on map.

August 9 (*Variation* 9° 20′ *E.*). Beginning at stake in fence line at point 1405 on course N. 57° W. run on August 8.

Thence north with said fence 556 3/10 varas to Mrs. King's fence (C. of her fence S. 87° 30′ E.) at 725 varas point shown me by Pedro Perez as the exact place where J. C. Ivet placed the north east corner of survey No. 347, Central & Montgomery R. R. Co., made for his father, Sabas Perez, in 1882 or 1883.

Beginning back at point 1405 in fence line. Thence south with fence at 627 2/10 varas fence from west, course about N. 80° W. a jacal about 123 varas N. 45° W. at 1349 4/10 varas to the S. E. corner of said survey No. 347, this point was also shown me by Pedro Perez.

August 9 (*Variation* 9° 20′ *E.*). Beginning at stake 3835 5/10 set on August 7, in Zachuistle flat.

Thence west (same count) at 4339 5/10 varas enter scrub live oaks, at 5079 9/10 varas fence (course south for about 300 varas, then turns about S. W.) at 5571 5/10 varas old road (C. N. 25° E.) at about 3650 varas wind mill about 250 varas south, at 5938 varas drove stake for N. W. corner of Encinal (point XII on map) continue on same course to avoid brush (new count) at 208 7/10 varas stake in Hidalgo road (C. about S. 2′ W.). Thence south 2858 5/10 varas to point. Thence east 208 75/100 varas to point on line, a stake from which a very old live oak tree four feet in di-

154 ameter marked on north side bears S. 77- E.

249 75/100 varas,—the x at foor of appears to have been made some fifteen or twenty years ago, but the is very old,—this tree stands at the N. W. point Motta del Llano. The tree has been burned out under the roots to such an extent that in a few years it will fall. This old tree is evidently the old land mark of an old survey, but what survey or by whom made one can only surmise.

Thence south (new count) at 396 varas stake from which south end of Motta del Llano bears S. 38° E. at 1014 varas south end of Motta del Llano bears S. 82° E. at 1070 1/10 varas stake in fence (point XX on map) (C. N. 89° 45′ W.). Thence S. 89° 45′ E. at

290 4/10 varas west fence of lane at 330 9/10 varas east fence of lane and a pointed live oak post in fence corner marked 64.

August 10 (*Variation* 9° 20′ *E.*). Beginning at stake 1070 1/10 in fence.

Thence south (same count) at 3349 8/10 varas young live oak, at 3561 varas left same, at 3590 varas an old well, at 3659 5/10 varas Zachuistle flat, at 3833 2/10 varas left same, at 4051 varas wind mill bears N. 78° E. at 4690 to 4892 varas in Zachuistle flat, at 4993 to 5195 varas Zachuistle flat, at 5649 varas to a kind of flat or redammedero, or swail, running about N. 40° W. four about two miles, at 5778 varas wind mill bears N. 57° E. at 5820 varas scrub live oak, at 6037 varas young live oak, at 6787 varas point.

Thence N. 89° 34′ E. at 482 4/10 varas to corner of Lassiter's fence (C. S. 88° 46′ E. with 8° 32′ E. variation.)

Beginning back at stake 6787. Thence south (same count) at 6820 5/10 varas to a live oak stake marked X, 1½ varas north of a live oak tree 24 inches in diameter, (this stake is in a beautiful live oak mott of 40 or 50 trees) at 6850 varas another live oak twenty inches in diameter, at 6909 7/10 varas stake, (thence S. 80° E. 48½ varas to fence corner, course of fence to east is S. 80° E. to south is S. 1° E.), at 7280 varas drove stake from which a live oak three feet in diameter marked X on west bears E. 5¼ varas.

155 (NOTE 1.)—The above described tree is Hayne's division corner on the east line of the Estevan Martinez Grant, and is 233 varas south of the S. W. patent corner of the San Antonio del Encinal grant (point XVI on map).

(NOTE 2.)—No other live oak is within 250 varas of this tree, except one about fifty varas S. 20: E., and it is not marked.

August 10 (*Variation* 9° 20′ *E.*). Beginning at stake 6787 set on 10th, which is 493 varas north of Hayne's division tree and 482 4/10 varas S. 89° 34′ W. of Lassiter's fence corner; thence N. 89° 34′ E. 300 vs.

Thence S. 17° E. 773½ varas. Thence S. 32½° E. 95 varas. Thence N. 2° E. 233 6/10 varas to an iron pipe ten inches in diameter said to have been placed there by Mr. M. T. Tippin for the S. W. corner of the San Antonio del Encinal Grant, as petented.

August 11 (*Variation* 9° 20′ *E.*). Beginning at the Tippin iron pipe. Thence S. 76° E. with a cut out line through live oak brush at 100 varas cross road (course about north and south) at 270 varas point.

Thence S. 4° E. 1373 8/10 varas to point on ridge west of small live oak mott. Thence S. 25° 30′ W. at 894 7/10 varas set stake 13½ varas N. 80° E. of intersection of fence (course of fence to west S. 80° E. course of another fence about north and south).

August 11, *evening* (*Variation* 9° 20′ *E.*). Beginning at point 106 varas N. 54° 15′ W. of a live oak 36 inches in diameter marked X ≡ which point is 26 varas north and 59 varas west of the N. E. corner of El Lucero Grant (point XVII on map).

Thence North over sand ridges at 600 varas left said hills, at 9531½ varas to point.

Thence N. 26° E. at 50 varas cross fence (C about north) at 804 5/10 varas point.

Thence N. 31° 30′ W. 638 7/10 varas point six varas east of fence.

156 Thence north 710 1/10 varas to point. Thence N. 9° E. 485 2/10 varas point from which a live oak twenty inches in diameter marked X on west and A on east bears S. 80° W. 21 varas another live oak 24 inches in diameter marked A on west bears N. 8° 30′ E. 82½ varas. Thence N. 9° 30′ W. 327 varas. Thence N. 1° 15′ E. 267 2/10 varas to stake at end of course S. 25° 30′ W. 894 7/10 varas set this morning.

August 14 (*Variation* 9° 20′ *E.*). Beginning at corner of Kenedy's new fence (point O on map).

Thence S. 89° 34′ W. with old fence, lagoon to north about 250 varas north of line, at 1866 varas lagoon about 100 varas to north, at 2000 to 3000 varas lagoon to south about 250 varas, from 2000 to 2500 varas on the north of line about one half mile is another, another lagoon to the N. W. about three fourths of a mile, at 5025 varas fence corner immediately south of Jarita lake (point XXIV on map).

August 15 (*Variation* 9° 20′ *E.*). Beginning at fence corner (point XVIV on map).

Thence S. 37′ W. with fence 424 4/10 varas to stake.

Thence west 94 5/10 varas to point where found a small old mesquite stake, red variety about one inch in diameter marked— on large end.

Began back at corner of fence (point XXIV on map) and took bearings as follows: Rock set on south bank of lagoon bears N. 14° 30′ W. 64½ varas, another rock about 15 varas south from present water line bears N. 15° 20′ W. 128 8/10 varas, a cedar post about eight inches in diameter four feet high, apparently set here within the last few years, bears N. 12° W. 78 6/10 varas.

(NOTE.)—This lake is about 600 or 700 varas long and from 75 to 250 varas wide, and runs about S. 75° W. The point where the rocks are is about 150 varas from its east end. The course of the fence south is S. 37′ W. the other fence S. 89° 34′ W.

Here ends the survey all of which is represented on the map herewith filed.

In mapping the Texas Mexican and other surveys south of the Encinal, I do so by calls for course and distance in their field
157 notes form the N. E. corner of El Lucero.

I did not (on this survey) run the east line of the El Lucero grant. I have given said line the distance called for in the report of M. Hanson, Jr., viz: 8499 varas which is correct according to my survey of same line run in 1895.

The broken lines bordered green show the San Antonio del Encinal, platted from its S. W. corner by course, disregarding calls for corners and lines of other surveys.

The solid green lines show said Encinal patented survey, constructed from its beginning point,—at Jarita lake,—(point XXIV on map) same being the N. W. corner of the Finados, and its calls for lines and corners of surrounding surveys.

The solid red lines show the San Antonio del Encinal by course and distance calls in the original grant, with its beginning corner located at the south west corner of the Borrosas, and its south line running through the north west corner of the Finados Grant, at Jarita lake. This construction ignores all original grant calls except the Borrosas and Finados.

The position of the other original surveys are as shown in black solid lines, constructed from Point A on map.

The position of the surveys constructed from Point B on map, is shown is a ..... line bordered red, with figures (1) (2) (3) (4) (5) (6) (7) (8) and (9) corners of same.

Acreage of Surveys.

Santa Rosa (within lines W, Z, IX. and M.) contains 49359.85 acres Santa Rosa (within lines W. Y. XI and M) contains 45191.07 acres. Santa Rosa, exclusive of conflict with Tule contains 46911.22 acres Tule (III, V, VI, VII, Y and X) contains 10760.2 Tule, (Purgatoria Hill XXII, XXI, II, I and 19) contains 9511.39 acres Encinal (within broken lines bordered green) contains 26143.7 acres Encinal, (within solid green lines) contains 27468.43 acres Encinal (by patent and calls for Santa Rosa) contains 28372.5.

158 *Conflicts.*

The Tule conflicts with the Santa Rosa, as surveyed by F. A. Blucher to the extent of 2448.64 acres, and with Texas-Mexican survey No. 155 by 21.11 acres, 13.11 acres of said 21.11 being also part of the 2448.64 acres.

The Tule survey as patented conflicts with a survey in the name of Mrs. Henrietta M. King 473 x 185 varas (at N. E. corner of Tule), 15.48 acres, and with survey No. 354, in name of C. C. S. D. & R. G. N. C. R. R. Co., 104.3 x 1900 varas, 35 acres; and with survey No. 355, same Company to same extent and acreage, viz: 35 acres; and with the Julian Harby Survey, 257 x 104.3 varas, 47.46 acres.

Survey 155 conflicts with the Tule by 21.11 acres.

Survey 155 conflicts with the Santa Rosa, as surveyed by F. A. Blucher, by 477 acres, 13.11 acres of which also conflicts with the Tule.

Survey 155 conflicts with James Forrester survey No. 5 by 141.5 acres.

Survey 156 conflicts with the Santa Rosa, as surveyed by F. A. Blucher, 482.81 acres.

Survey 156 conflicts with the San Antonio del Encinal 114.96 acres., of which 87.28 acres is also in the 482.81 acre conflict with the Santa Rosa.

Survey 153 conflicts with the San Antonio del Encinal 143.26 acres.

Survey 152 conflicts with the San Antonio del Encinal 135.78 acres.

Survey 348 conflicts with San Antonio del Encinal by 52.62 acres.

(NOTE.)—The conflicts with the San Antonio del Encinal above referred to, are based upon the Encinal's north line being located by its calls for the S. W. corner of the Santa Rosa and the $\int\int$ tree (this north line is shown in solid green line on map and gives an excess of 705 acres in the west line of the Encinal.

The acreage between the west line of the Santa Rosa as surveyed by Blucher, and its west line as fixed by the east line of the
159 Tule, as patented, is 4168.78 acres.

The Encinal by patent calls conflicts as follows:—

(1) With the Barrosas 363 x 5542 = 2011,746 square varas = 356.07 acres. Of this conflict 4 x 5542 varas = 22,168 square varas = 3.92 acres, is west of the old Kenedy fence.

(2) Should the Encinal stop 366 varas south of the Santa Rosa south line (at broken line bordered green on map) it will cut off conflict 363 x 366 varas = 132,858 square varas = 23.5 acres, which will leave the conflict of the Encinal 332.56 acres.

(3) If the Encinal runs south from the S. E. corner of the Santa Rosa to the north line of the Finados, the conflict with the Barrosas will be 400 x 5542 varas = 2,216,800 square varas = 392.37 acres, with 3.92 acres west of old fence.

(4) Should the Encinal run south to the broken line bordered green, and then in a direct line to the identified S. W. corner of the Encinal as patented (point XVI on map) then the Encinal will conflict with the Finados, as fenced, by 7147 varas east and west and 366 varas wide at east end and 341.4 varas at the west end, making an average conflict of 353.7 x 7147 varas = 2,527,894 square varas = 447.45 acres.

(5) Should the N. W. corner of the Finados be at the new cedar post 78.6 varas north of the fence corner at Jarita lake (point XXIV on map) and the said north line should continue the same distance north of the fence, said conflict will be increased 40.45 acres, or a total of 487.88 acres. However, this cannot be done without causing a conflict between the Finados and Barrosas to the extent of 78.6 varas.

(6) There is no conflict between the Encinal and the Texas-Mexican Railroad surveys south of same, but should the south line of the Encinal run in a direct line from its identified S. W. corner to the N. W. corner of the Finados, as shown by solid green line, then there will be a vacancy of 479 acres south of the Encinal. Said vacancy is wholly within the enclosure of Mr. Ed C. Lassiter and is 341.4 varas wide on the east end and runs to a point on the west.

The amount of land on the south of the Santa Rosa, between the solid green line and broken line bordered green is 366 varas
160 at east end and 739 varas at west end, equals an average of 5025 x 17,210 = 8,648,025 = 1530 acres, 26.12 acres is east of the Barrosas west line, which line is four varas west of the Kennedy old fence.

The Santa Rosa, as surveyed by F. A. Blucher, conflicts as follows:—

With surveys 69, 13.31 acres, being 31.4 varas wide at south end and 49.9 varas wide at north end.

With survey 70, 23.51 acres, being 49.9 varas wide at south end and 94.8 varas wide at north end, and 61.3 varas wide at point where Santa Rosa lines begin to run N. 12′ W.

With survey 71, 50.58 acres, being 128 varas wide at south end and 185 varas wide at north end.

With survey 72, 63.51 acres, being 185 varas wide at south end and 205 varas wide at north end.

Survey No. 154 conflicts with the James Forrester survey No. 5 by 2355 varas east and west and 1007.6 varas north and south, equal to 420 acres.

Survey No. 151 conflicts with James Forrester survey No. 5 by 1007.6 x 809 varas, equal to 144.2 acres.

Survey No. 15 conflicts with James Forrester survey No. 6 by 1423 x 571.5 + 940 x 400 varas = 1,189,244 square varas = 210½ acres.

Survey No. 347 conflicts with James Forrester survey No. 6 by 2083 x 1220 varas, equal to 449.8 acres.

(NOTE.)—All of the conflict of survey No. 347 is under fence and has been, so they claim for about twenty-five years.

In calculating the conflicts I gave survey No. 5 the actual distance east and west found on the ground (3636 varas) and the distance called in patent north and south.

In calculating conflict of No. 6, I gave it patent calls for distance as I did not find on this survey its S. W. corner.

The amount of land west of the Blucher west line of the Santa Rosa and the west line of the Encinal, as run by me, and the solid green line and broken line bordered green, is 705 x 5905.3 varas, equal to 736.90 acres of which

161 5262 acres is also embraced in survey No. 348;
135.78 acres is also embraced in survey No. 152;
143.26 acres is also embraced in survey No. 153;
and 27.68 acres is also embraced in survey No. 156.

The Barrosas conflicts as follows:—

With Survey No. 51, Central & Montgomery R. R. Co. 8/10 acres.

With survey No. 52, Central & Montgomery R. R. Co. 9 8/10 acres.

Paistle Conflicts.

According to the Blucher survey there is no conflict between the Paistle and the railroad surveys on its west but there is a vacancy of 653.21 acres between said railroad surveys and the Paistle, as shown on map.

According to the J. J. Cocke line run in 1883 and as fenced the following surveys are wholly in conflict with said Paistle, viz: Surveys 51, 52, 56, 57, 58, 59 and 60 Central & Montgomery R. R. Co., and Nos. 3 and 4 C. C. S. D. & R. G. N. G. R. R. Co., and following surveys conflict as below stated:

Survey No. 55, G. C. & S. F. R. R. Co. to extent of 1.16 acres.
Survey No. 64, G. C. & S. F. R. R. Co., to extent of 2.56 acres.
Survey No. 63, G. C. & S. F. R. R. Co., to extent of 94.35 acres.
Survey No. 62, G. C. & S. F. R. R. Co., to extent of 22.18 acres.
Survey No. 61, G. C. & S. F. R. R. Co. to extent of 25.38 acres.
Survey No. 84, G. C. & S. F. R. R. Co., all in conflict except 200.31 acres.
Survey No. 1, C. C. S. D. & R. G. N. G. R. R. Co., all in conflict except 229.89 acres.
Survey No. 2, C. C. S. D. & R. G. N. G. R. R. Co., conflicts to extent of 197.07 acres.

162 *Fences and Enclosures.*

The quantity of land enclosed with the Kenedy new fence at S. E. corner of Santa Rosa is 2311.68 acres, of which 548.67 acres is on Santa Rosa Grant (this 548.67 acres does not include 4.15 acres of the Santa Rosa which is east of the Kenedy old fence) and 1763 acres on the San Antonio del Encinal, but as the old fence is four varas east of the west line of the Barrosas, will leave 1759.1 acres of said Encinal within said new fence enclosure.

Lassiter's fence at Jarita Lake corner (N. W. corner of Finados) is on the line, and at the N. W. corner of said fence it is 260 varas north of the south line of the Encinal, therefore, all of said fence is on the north of the south line of the San Antonio del Encinal.

In addition to the fence above referred to, Mr. Lassiter's north fence of a small enclosure begins at the north west corner of his pasture and runs thence south 213 varas; thence N. 80° W. 437.5 varas; thence S. 1° E. 128 8/10 varas, where it crosses the south line of the San Antonio del Encinal.

The two fences running north from the N. W. corner of Lassiter's fence and which two fences make the lane, are wholly on the San Antonio del Encinal, at the south end said fence being 482 varas east and at north end, at Motta del Llano, said fences are 290 and 330 varas east of said line.

The ranch houses at Santa Rosa while not expensive, still they are above the average ranch house (when I say abouve the average I do not include in the comparison Santa Gertrudes and La Parra) some of them being quite old.

There are six artesian wells on the Santa Rosa Grant and numerous wind mills and wells, outside and cross-fences as are necessary, but as I did not actually measure each and all of said fence lines, I will not undertake to describe same further than as shown on the map herewith filed.

AD-ENDA: I omitted the following from the body of my report, viz:

August 5 (*Variation* 9° 20′ *E.*). Beginning at S. E. corner of El Tule (point VII on map) from which north end of Monta
163 Negro bears N. 89° E. south end bears N. 86° 30′ E.

Thence east (= N. 89° 12′ E. with variation of 8° 32′) at 556 varas east tree on Tule bears N. 60° 45′ W. wind mills bears N.

84° E.; at 1523 varas said east tree bears N. 68½° W.; at 2573 varas set stake; at 2973 varas point 35 varas west of fence, same wind mill bears N. 18° 30′ E. Monte Negro bears N. 52° 15′ E. west end N. 86° 30′ E.; point 2973 is about 300 varas from Monte Negro.

The State and the defendant introduced in evidence the supplemental report of the said F. M. Maddox, surveyor, which reads as follows:

In the District Court, 26th Judicial District of Travis County, Texas.

No. 18899.

STATE OF TEXAS
vs.
D. R. FANT.

To the Hon. V. L. Brooks, Judge in and for said court:

At the request of Attorney General Bell and Messrs. C. W. Ogden and J. C. Sullivan, I have prepared a supplemental report showing the acreage and conflicts of the La Parra, Paistle, Abajo, Santa Rosa, Tule and Finados, which is herewith submitted:

Acreage.

Santa Rosa by calls for quantity in original grant, six leagues or 20,782,500 square varas contains	30228.5	acres
" " within lines W, Z, IX, and M, exclusive of inset contains	49359.85	acres
Excess	19131.35	acres
" " within lines W, Y, XI, and M, exclusive of inset, contains	45191.07	acres
Excess	14962.57	acres
" " within lines W, Z, IX and M, exclusive of inset and conflicts with Tule contains	46911.22	acres
Excess	16682.72	acres
164 (NOTE.)—The inset contains	253.39	acres
Santa Rosa (estimated) within the red lines (Cocke's lines) contains	30825	acres
Excess	596.5	acres
(NOTE.)—If the Santa Rosa is constructed by the Cocke or red lines, it will conflict with the San Antonio del Encinal as by patent calls	1628	acres

Tule within the lines III, V, VII, Y and X contains.. 10760.20 acres
Excess..... 1417.45 acres
" from Purgatorio Hill, XXII, XXI, II, I and XIX contains..... 9511.39 acres
Excess..... 168.64 acres

(NOTE.)—The 168.64 acres excess is caused by following the meanders of the Olmos Creek between points I and II.

Tule beginning at the N. E. corner of the Loma Blanca; thence N. 89 12′ E. 8180 varas to a point 5000 varas N. 89 12′ E. of Purgatorio Hill; thence S. 00 48′ E. 5696 varas to the Olmos Creek; thence up the Olmos Creek with its meanders as follows, viz: N. 87 15′ W. 95 varas; S. 24 W. 130 varas; S. 6 W. 190 varas; S. 61 45′ W. 206 varas; N. 66 30′ W. 195 varas; N. 74 45′ W. 230 varas; S. 14 15′ W. 320 varas; S. 82 15′ W. 180 varas; S. 61 30′ W. 178 varas; N. 54 30′ W. 168.8 varas; S. 00 48′ E. 6912 varas; thence S. 89 12′ W. 6880 varas to the east line of the Loma Blanca and the southwest corner of the Tule as patented; thence N. 00 48′ W. 13192 varas to the place of beginning, contains.. 17389.83 acres
Excess..... 8047.08 acres

NOTE.)—The above boundaries are shown on map within lines V, XIX, I, II and a point 692 varas south of XXI, thence to VI and back to V.

Finados according to patent calls and objects on the ground contains ..... 54075 acres
" original grant calls for..... 44280 acres
Excess..... 9795 acres
La Parra original grant calls for fifteen leagues or... 66420 acres
" " according to Cocke's survey of said grant
165 made in 1879 his south line is 22400 varas long, but I made said line 23517 varas long or an excess of 115 varas. Allowing the same excess in Cocke's north and South lines, will make an excess in acreage east of its west line as surveyed by Blucher of about..... 600 acres.
La Parra—The quantity of land between the lines A–R and Q. D. on map is..... 8129.25 acres
Or a total excess of the whole survey as made by Cocke of about..... 8730 acres
Paistle original grant contains..... 24354 acres
" as surveyed and patented contains..... 27487.55 acres
Excess..... 3133.55 acres
" as surveyed *in* Cocke in 1883 contains..... 27484.27 acres
Excess..... 3130.27 acres
" as resurveyed by Cocke in 1883 conflicts with the Abajo as surveyed by Cocke in 1879..... 6564.89 acres

Abajo original grant contains.....	24354 acres
" as surveyed by Cocke in 1879 contains.....	25159.25 acres
Excess.....	805.25 acres
" according to Cocke & Blucher's report contains..	27104.76 acres
Excess.....	2750.76
" according to Cocke & Blucher's report conflicts with the Santa Rosa as surveyed by Blucher..	8510.40 acres

166 *Maps.*

The following maps were introduced in evidence by the parties hereto, and are, under the order of the Court, sent up with the record:—

1. The State introduced in evidence the map marked A and the map accompanying the report of J. J. Cocke and C. F. von Blucher, surveyors appointed by the Court by its order of date Sept. 4, 1903, which is marked Exhibit B.

2. The State introduced in evidence map made by A. M. French, surveyor, marked "Map D."

3. The defendants introduced map accompanying the report of F. M. Maddox, surveyor, appointed by the court by its order of date May 30, 1904,—marked "Map C."

4. The defendant introduced in evidence the map accompanying the report of C. F. von Blucher, and J. J. Dix, surveyors appointed by the order of the court of date —— ——, marked Exhibit A.

5. The defendant introduced in evidence map certified by the Commissioner of the General Land Office, of date July 13, 1875, and marked "Map E."

6. The defendant introduced in evidence map made by Felix A. von Blucher, dated January 11, 1869, marked "Map F."

7. The defendant introduced in evidence a map testified to by F. M. Maddox as representing the relative location of the grants in question, according to the calls for each other in the original grants marked "Map Z."

8. The State introduced in evidence map made by Martin Hanson, marked "Map L."

9. Photographic copy of map of La Parra Grant marked "Map H."

167 The defendant introduced in evidence subdivisions four and five of Art. 20 of the Decree of Colonization by the Congress of the State of Tamaulipas, of date Dec. 15th, 1826, which reads as follows:—

4. "The boundaries that are established shall be clearly and distinctly pointed out, expressing the bearings and specific land marks, under the responsibility of the Judge of survey."

5. "Standing waters the land contains shall likewise be designated and adjudicated with the lands."

It is admitted that the Santa Rosa de Arriba grant, and all of the individual sections of the surveys located on the old Santa Rosa de Abajo grant, were purchased from F. J. Parker by D. R. Fant and Robert Driscoll on Nov. 23, 1882, and that D. R. Fant, in 1883,

purchased the interest of Driscoll in said land, and became the sole owner thereof, and that in 1893 he gave a mortgage to D. Sullivan & Co., upon all of the said property, as well as upon the Encinal, Tule, Texas-Mexican No. 155, and the portion of the Loma Blanca owned by the said D. R. Fant, that by the foreclosure of said mortgage and by deed of confirmation of D. R. Fant the title to all of said lands vested in D. Sullivan in April, 1904, and that the defendant D. Sullivan is the owner of all of the lands covered by the San Antonio de Arriba grant, by the Tule grant, by the San Antonio del Encinal grant, by Texas Mexican survey No. 155, of the Western portion of the Loma Blanca, and of the individual sections of the surveys located on the old San Antonio de Abajo grant, and is in possession of Section No. 156 in the name of the Texas Mexican R. R., under lease from the State.

168 A. M. FRENCH, a witness for the State, being duly sworn, testified as follows:—

I am a civil engineer and surveyor. I have had occasion to survey the land in the neighborhood of the Santa Rosa de Arriba grant, in connection with others. I have a map here of this territory, it being the map marked B. There is little difference between the manner in which I have located the Western part of the Encinal from the way delineated on the Maddox map. They have taken it pretty nearly according to the patent. I do not know how they located the Encinal. They have located that perhaps from mott, that is a very old mesquite marked with a cross. I located it from the Jarita lake. I have located the Encinal by making it depend on the other surveys, and have located it so as to make it conform to the Olmos Creek at the Western boundary line of the Santa Rosa de Arriba. I have located the Encinal grant with reference to the field notes in the original grant, as well as in the patent. There is very little data to go by in these old surveys. The only thing you can go by is the natural objects, and they are not always drawn on as closely as they might be by the original surveyor, and I have taken the natural objects as near as they could be obtained, and then I have made it depend wholly on the location of the Olmos Creek. With relation to the Tule grant, I know where the Purgatoria Hill is, it is small round hill. It is a well known object. It has a small round top, a man can locate that very closely. Here is the Purgatoria Hill (Pointing out the place designated on the French map). Beginning at the Purgatoria Hill, and running East 5000 varas, and South 5000 varas, you will not reach the Olmos Creek by 599 varas. If the N. W. corner of the Tule is located 2500 varas West of the Purgatoria Hill, and from that point you run East 5000 varas, and thence South, you will not reach the Olmos Creek by 1275 varas. If the Tule is constructed by beginning at the Purgatoria Hill, and running East 5000 varas, and thence South to the Olmos Creek—the Creek from the point at which this line would strike it runs up

169 the Creek a little North of west, its general course from the point at which such a line would strike it—for about 800 varas it is pretty nearly a west course, and from there West

there is no material change in the general course of the creek. At no place West of the point where the East line of the Tule would strike the Olmos Creek, by beginning at Purgatoria Hill, and running East 5000 varas, and thence South to the Creek, does the Creek change its course, so as to run practically North and South for any distance, though there are short bends in the Creek which do not change its general course, which is practically East and West, or a little bit North of West. About a mile East of the point where the East line of the Tule would strike the Creek, if that grant is constructed on Purgatoria Hill, as above stated, the Creek makes an abrupt bend to the North, and runs almost North and South. If the Tule grant is constructed by beginning on Purgatoria Hill, and running thence East 5000 varas, and South to the Creek, and thence West 1300 varas, and the N. W. corner of the Santa Rosa de Arriba is fixed at the point thus reached, and a line is run from that point directly East 3700 varas, and thence a line is run North 2550 varas, as indicated by the dotted line on my map, the sharp bend of the Creek to the North, about which I have testified, and which is shown on my map, will be immediately West of the line running North 2550 vs. If the Tule grant is constructed according to the field notes of the patent, as is indicated by the green lines on my map, and a line is run East from the entracant corner of the Tule 3700 varas, and thence a line is run North, it would cross the Creek at about 500 varas. In order to run a line from the entracant corner of the Tule, as indicated by the green lines on my map far enough to make a line run North miss the sharp bend of the Creek, of which I have spoken, it would have to run about 5500 varas West from the entracant corner of the Tule, as indicated by the green lines on my map. If the Santa Rosa de Arriba grant is constructed by beginning at the N. W. corner thereof, as indicated by the red lines on my map, and running thence South 15000 varas, thence East 10000 varas, and thence North 17500 varas, as is also indicated by the red lines on my map, the grant will contain, making allowances for the meanders of the Creek, just about the quantity — for in the original grant,—that is to say, by constructing the Santa Rosa de Arriba from its N. W. corner, as indicated by the red lines on my map, and running the course and distance called for in the original grant from that point, the grant would contain about the quantity called for in the original grant. Referring to the East line of the Santa Rosa de Arriba grant, as indicated in red on my map, I have marked in red the Tresquilla, lying to the West of the Eastern boundary line of the Arriba, as indicated in red on my map. There is no lake at that point now. There is a small lake at the point indicated on my map as the Tresquila. I just draw in the Tresquila in red like everything that is on there in red by a reference to the calls in the original grant, where we would examine we found them as nearly as we can judge the location. There is, as I have stated, however a lake at the point indicated as Tresquila on my map.

There is also another lake indicated on my map as the Leoncitas, lying to the East of the Western boundary line of the Santa Rosa

de Arriba grant, as indicated in red on my map. I don't know what the last mentioned lake is called. I could not find out the name of that. The party that lived there told us that it was the Leoncitas. We found the Salto Hills on the ground at that point indicated on my map, and we found the hills and the rocks along the creek at the different points indicated on my map. We found a little point in the creek, right at the end of the hill. At the point indicated on my map, near the Salto Hills, we found a lime rock on both sides of the creek cut out in the sand. There is no water hole there now, it is cut out. The sand is worn through. It is probably two feet thick on the side, at the edges it still shows the old ledge. The drop or fall is about 2 or 3 feet. A little further up the creek at the point indicated on my map, there is a water hole right at the bank, — is a sort of clay in the bed of the creek, and it has
171 formed a water hole just above. And still further up the creek at the point indicated on my map there is a lime rock that shows only on the North side of the Creek but evidently at one time it had been cut away, extended across the creek. Whether it extended here to the South bank, I cannot say. There is a hard formation on the South bank, also there, a kind of hardish clay bank. That is, approximately, about a mile above the first rock which I have mentioned. There is a little water hole there to-day. When we were there the creek was running, so that I could not say exactly how deep the water hole would be in dry time. Still further up the creek, and about two miles west from the first rock that I have spoken about, and at the point indicated on my map there is another place about 2 miles or a little less than two miles, another place where the rock extends clear across the creek.

Cross-examination by DEFENDANT:

I was with Mr. Maddox when he made the survey of these lands, under the order of the Court. I have made surveys in that immediate neighborhood prior to that time. I have surveyed the Loma Blanca. I never had occasion prior to going out on this survey to read the field notes of the original patents or grants,—except the Paisano grant. I had seen that before. The original grants and also the S. W. corner of the Loma Blanca were well known to me, and recognized as being located at the point indicated on my map, and is correctly shown on the Maddox map. I pointed out that corner to Mr. Maddox as a well known, well-established corner in that neighborhood. The original grant corner is, as indicated on my map, situated about 400 varas West from the patent corner. The original grant of the Loma Blanca is lost, but the original grant of the Los Olmos y Loma Blanca, which lies directly West of the Loma Blanca, is extant and calls for its S. E. corner to be the same as the S. W. corner of the Loma Blanca. When I first saw this corner, there was a rock with the bearing trees, the original patent corner. The bearing trees are now known, that is
172 some of them. There is also a well known natural object, the Loma Blanca Lake near this point. The N. W. corner of the Loma Blanca and the S. W. corner of the Paisano is known

as the Tampacuas corner, this is a well known corner and is well recognized as the common corner of these two grants, and is located by running from the well known and recognized S. W. corner of the Loma Blanca grant. The Paisano grant calls for the Tampacuas corner. The S. E. corner of the Paisano grant is called in the original grant Purgatoria. We looked for this corner of the Paisano from the Purgatoria hill, it was called in the patent to be 400 varas west of the summit of Purgatoria hill. There is an excess of about 220 varas in the Eastings and Westings of the Loma Blanca, and the way Blucher made the survey, starting from the Tampacuas corner, he allowed an additional 419 varas excess in the Paisano, so that, according to the Blucher survey, there is an excess of about 650 varas from the Tampacuas corner to the S. E.—Purgatoria—corner of the Paisano, and this corner is about 400 varas West of the Purgatoria hill, and is not located on Purgatoria hill at all either by the original grant or by the Blucher survey. It is about 3204 varas from the Purgatoria hill to the N. E. corner of the Loma Blanca. The Tule grant also calls for its N. W. corner to be the Purgatoria boundary, and the Tule also calls, in the original grant, for the Loma Blanca, as its Western boundary, and, as I have stated, the N. E. corner of the Loma Blanca is 3204 varas west of the Paisano hill. The Loma Blanca grant is fixed on the ground according to the patent corners as I have indicated in green on my map. The grant lines should be 400 varas to the West. If the Tule is located by beginning at the Purgatoria hill, and running, thence, East, South, West and North, the course and distance called for in the field notes, it will leave a vacancy between the west line of the Tule and the West line of the Loma Blanca of about 3400 varas in width. If the Tule is located by fixing its N. W. corner at the Purgatoria Hill, it will leave the Tule lake entirely to the West of the Western line of the Tule grant, if the place marked "Charco" on my map, near the South line of the Tule, as patented, is the Tule lake. The lake to the East is the larger one. The Charco is smaller, but there is a good deal of sand drifted in there, now drifted across the creek. Just below that first one there is a sand-drift across the creek, possibly that original- was one hole, I do not know how that might be. If the point marked "Charco" on my map is the Tule lake, it would be approximately in the center of the Southern end of the Tule grant, if the same is located adjoining the Loma Blanca, and if located with Purgatoria hill as the N. W. corner of the Tule it would be entirely West of the Tule grant. The pencil lines on my map indicate approximately where the East and West lines of the Southern end of the Tule would be located if that grant is constructed by using Purgatoria hill as its N. W. corner. The pencil line on my map just East of the Eastern boundary of the Santa Rosa de Arriba, as indicated in red on my map, is where the Eastern line of the said Santa Rosa de Arriba grant would be located by course and distance from Purgatoria Hill. The next pencil line on my map to the East indicates where the Eastern line of the Santa Rosa de Abajo, and the Western line of the Paistle would be located by course and distance from the

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Purgatoria hill. The next pencil line to the Eastward on my map indicates where the Eastern line of the Paistle, and the Western line of the La Parra would be located by course and distance from the Purgatoria hill. These pencil lines show the Eastern boundary of the Santa Rosa de Arriba, the Western boundary of the Abajo, and the East boundary of the Abajo, West boundary of the Paistle, and the East boundary of the Paistle, and the West boundary of the La Parra, based on the Tule grant, as surveyed by taking the Purgatoria hill as the N. W. corner do not correspond with either the Blucher lines of the Arriba, or the patent lines of the Paistle, or with the Cocke lines of the Paistle or La Parra, or with the lines of the grants that are shown on my map in red. The only way that the Tule can be located as indicated by the pencil marks or by my red lines is by taking the Purgatoria Hill as its N. W. corner,
174 except that I show two red lines as the Eastern boundary of the Tule, one is from the Purgatoria hill, and the other is from Blucher's Purgatoria corner, and which he calls Lindero del Purgatoria. These lines are 400 varas apart. If the Tule is located by disregarding the Purgatoria hill, as marking its N. W. corner, but is located by taking the call for the Loma Blanca, it will be located as indicated by the green lines on my map, except that there will be a small excess in it. The green lines on my map indicate the true location of the Tule as patented, and fixed by the bearings of the Salto Hills, as called for in the patent. If the Tule is located by taking the Purgatoria hill as its N. W. corner, and running thence course and distance, the Eastern boundary line of the portion of the Tule grant which lies South of the Olmos Creek, will run within about 250 varas of the Mota Negro. This is a big mott that runs from N. E. to S. W. and I suppose is 200 varas long, a big black-looking mott, of very large live-oak trees. This is a prominent land mark. The mott shown on my map near the Western boundary line of the Encinal, as indicated in green, is not now known as the Mota de Llano. It is now called Sorrillo. It is a large mott, and the only large mott in that immediate neighborhood, altho' there are some motts to the north and some to the west of it. I have never been to the motts lying to the West of it. The mott shown on Mr. Maddox map as the Mota de Llano is the same mott shown on my map, near the Western boundary of the Encinal. The lines of the Encinal, as indicated in red on my map, show the location of the Encinal as ascertained by finding the Western boundary line of the Santa Rosa de Arriba to the meanders of the creek, as near as possible, and, in that manner, establishing the Western boundary line of the Arriba, and, from that, establishing the lines of the Encinal. If the west line of the Arriba is located in this manner, then the Tule would have to be located by running from Purgatoria hill, as the N. W. corner, the course and distance called for in the original grant, or there would be a vacancy between the West line of the Arriba and the East line of the Tule, and there would be such a vacancy if the Tule was located by the call
175 for the Loma Blanca,—the vacancy would be about 1600 varas wide. I was with Mr. Maddox when he meandered the

Olmos Creek from point "A," as indicated on his map to point "H," as indicated on his map, and the meanders shown on his map, are substantially the same as shown on my map, and are correct. At the point indicated by the letter "A" on Mr. Maddox's map, there is a mud flat making into the Olmos from the South, from the point "A" on Mr. Maddox' map to the point H on his map. It is about 11000 varas, and there is between the point "A" and the point "H" no place on the south bank of the Olmos Creek, which corresponds to the mud flat at the point indicated on Mr. Maddox' map by the letter "A."

Witness was here shown photographic copy of map taken from the records of Nueces County, Texas, and testified that there was a point about 2000 varas West of the point indicated by the letter "A" on the Maddox map, which might correspond with the N. W. corner of the La Parra grant, as shown on the Photographic map. This point 2000 varas West of point A is indicated on my map by the words "Sand-bar." There is a double channel at this point running around the sand bar. I didn't show the double channel. I marked it "sand-bar" because sometimes when the tide is high it is entirely covered by water. This sand bar sets entirely in*dis*e of the banks and channel, while the mud-flat makes off from the banks and channel of the Creek to the South and Southwest. I was with Mr. Maddox when he ran the South line of the Parra grant. I recall that the original grant calls to run 7800 varas from its S. W. corner East to the Tio Cuilas mott. The Tio Cuilas mott is located near the South boundary line of the Para grant, as shown on both mine and Mr. Maddox's map. The distance from the point R on the Maddox map to the Tio Cuilas mott is about 7600 varas. It is about 7200 varas to the West edge of it, and 7800 varas to the East edge the point R. on the Maddox map. The distance from the point Q which is approximately the point from which the J. J. Cocke located the S. W. corner of the Parra grant it would be 2000 varas
176 further to the Tio mott. The distance called for by Fuentes in the field notes of the Parra, Motas and Palmito grants from the N. W. corner of the Parra grant to the mesquite lake is 23550 varas. The distance from point "A" in the Maddox map to the Mesquite lake is 30,800 varas. The distance from point D on the Maddox map, which is the point where J. J. Cocke makes the N. W. corner of the Parra, and the N. E. corner of the Paistle to the Mesquite lake is 32075 varas. There is one line beginning at the point A on the Maddox map, (and the point A indicated on the Maddox map) correctly indicates the N. E. corner of the Paistle, as patented. We found some marked trees there that were probably patent line marks. We found a tree but the marks were not there, as called for, but we agreed it must be the tree. According to the patent lines of the Paistle, there is an excess East and West of about 500 varas over the distance called for as the width of the Paistle in the original Las Barrosas grant. The original Paistle grant is lost, and the only thing we know in regard to the width of the Paistle is that it is given in the Barrosas as 8366 varas. The point A is the true corner of the Paistle grant as patented, and running thence

course and distance South and East to the Trocudas mott, that will more nearly correspond, by course and distance, with the point A. than with the point D on the Maddox map. Running from point A. on the Maddox map, South and thence East the distance called for in the Barrosas and Encinal grants, you will miss the mott marked on the Maddox map as the Tioculas not less than 100 varas. Referring again to the East line of the Santa Rosa de Arriba grant, if that boundary is as indicated in red on my map, the large lake shown on my map will be entirely outside of the Arriba grant. The lake marked Tresquila in black on my map is about 150 varas long, and 50 to 75 varas wide. The lake marked "Leoncitas" in black on my map is about 500 varas long. The swale from the big lake runs up to the small lake, marked T in black on my map. They are both in the same depression.

177 Redirect examination by THE ATTORNEY GENERAL:

In surveying around in this region, I did not find that the facts, as developed on the ground, corresponded substantially with the calls in the original grant. We found that there was an excess between the natural objects, which we could identify in the surveys made by Antonio Canales. We found that there was an average excess of 4.6%. If the point marked "lake" on my map is the correct Tule lake, it would be located near the West side of the Tule grant constructed from the Purgatoria Hill, as its N. W. corner. There is no other bend in the Olmos Creek to which the offsets and calls in the original Santa Rosa de Arriba grant could be fixed, except the one shown on my map, running North and South, and East, about which I have already testified. Ignoring every call of every survey that I have been interrogated about, except the Santa Rosa de Arriba there is no place on the Olmos Creek where you can locate the Western line of the Santa Rosa de Arriba, according to the set-offs shown on the map, except at the sharp bend in the Creek to the North, about which I have spoken. I have put it at the nearest place at which I could make the calls fit. There is no other place to which they will fit. I could put the Western line further West, but approximately there is no other place the meanders will fit that sharp bend on the North East which I have spoken about. That being the case, I am able to locate by the bend of the river the N. W. corner of the Santa Rosa de Arriba grant at the point indicated in red on my map. There is no call in any of the original grants for the Mota de Llano, as the corner of either the Encinal or Ayala grants, what is known as the Blucher West line of the Santa Rosa de Arriba is about 2000 varas West of the Eastern boundary line of the Tule, as patented. If the Santa Rosa de Arriba is constructed as indicated by the red lines on my map, and the Encinal is then
178 constructed by course and distance called for in the original grant, there would be no conflict between the two grants,— that is the Encinal would not conflict with the Santa Rosa de Arriba on the west, but the two lines would exactly correspond. I ran with Mr. Maddox west to the line of the Parra, South from the Poso. The Paso Ancho means a wide crossing. I know where I located

the Paso Ancho. It is at the point indicated in red on my map, as the N. W. corner of the Parra, and the N. E. corner of the Paistle. Right there is where all of the roads go into the Creek. There is one road which goes down there to the line which is 290 varas west of the line which Mr. Cocke ran, and there are roads going in here to the East of the Cocke line, and here is one road here which runs off to the Penascal, which is a point over on the coast. The Penascal road comes along the fence line, and comes down close to the bluff, and part of the way it runs under it, and then it comes on up and crosses at the point I located as the Paso Ancho. I found no road as designated on the Maddox map crossing to the East of the point I located as the Paso Ancho. They come down there underneath the bluff and run along under it, but they cross the creek all together as far as have been able to find out. On that side of the creek I went over and inspected all the way down, there is no sign of a road that is on the North side of the creek. On the South side of the creek, there is one road coming down, and we traced it a mile back from the creek, we could trace it, and it was running S. W. which would of course, about strike it. If it came up it would about strike the Cocke corner on this side, but we could not follow that all the way down to where it fell into the bed of the creek, but just as represented there on the map. They have all these roads on the North side that ran off to the N. W., they all come down, even the Penascal which comes down there does not cross what would be a straight crossing if that were the Penascal at the mud flat. Here is the old oak post designated on my map, which is about N. E. of where we located the N. W. ocrner of the La Parra grant. That sets on the sand-bar which I have shown here, and is an old gate post of
179 the King fence. The blue line on my map represents the present road as Mr. Kenedy travels it going to his ranch. The appearance of the old roads was that they were cut very deep, and all grassed over. It is a fact that an old road traveled years ago,—the growth in the track of that old road makes it discernable. You can follow the old trail from the Paso Ancho, as I locate it. I did not run South from the Paso Ancho, as I locate it. We had already run the line which was 296 varas East of there with Mr. Maddox. I went along the line that I had ran with Mr. Maddox, and made the connection over to the line which would run South from the Paso Ancho, as I located it. I did this about a week ago. I located the N. W. corner of the La Parra, and the N. E. corner of the Paistle, as indicated in red on my map as 296 varas west of the point where Cocke located it. Running South from the Paso Ancho, as I locate it, we reached the end of the Encinal at about 2700 varas. There is a line of stumps running off to the East of our line. I mean that 2500 varas South of where I put the N. W. corner of the Parra, there are some old stumps. I ran the west line of the Parra, as indicated by the green line on my map, and 2700 varas we found nothing to correspond to the Encinal and Parra. We found nothing on that line until we got down about 4000 varas. The distance called for in the original Parra grant from its N. W. corner to the Transcas mott is 6900 varas. At about 7200 varas we found, as Mr.

Maddox shows on his line, three old stumps. In going back there and investigating further a week ago we found some more stumps to the west of there probably 200 varas. On my return, I found 12 or 15 stumps. The original grant calls at 7500 varas altogether. I enter the Paistle timber at about 7800 varas, from 7800 to 8000. We found some more old stumps running to the east of this line, as I locate it, probably 1000 varas, was as near as we could locate any stumps down there, and then the line of stumps ran off S. W. We followed them about ¾ or half a mile. We found some half dozen stumps on that line, old stumps. This is indicated on my map. I was out at the Paso Ancho, as located by me about
180 three weeks ago, with Mr. Kenedy, and three or four Mexicans, and Mr. Hyman and Mr. East. I do not remember the name of the Mexicans. Then I saw the Mexicans that are here as witnesses. Also an old darky, colored man by the name of Johnson. We all went there and Mr. Kenedy and these men showed us a rock. It was a rock sticking up above the ground, some three or four inches, a pointed rock. This rock was about 296 varas west of the point D. shown on the Maddox map. The rock was in some prickly pear and brush. I was situated on a little round knoll, just slightly raised above the surrounding country, probably about a foot or some such matter. The point of the knoll was probably well I guess 25 feet across the top of it. The rock stuck up three or four inches. If a man did not know where to look for it, he could not find it. We then dug down to the center of the rock, we had a shovel. The prickly pear that were growing around it were at least fifteen years old. It had been set there a long time. It was almost entirely covered up with brush. There are prickly pear there. Well, the roots were as wide as a man's hand. We dug down to the bottom of that rock. It was about 45 inches long, 2 inches thick, and 6 or 8 inches wide at the top. It was 4 inches thick, and 2 feet wide at the bottom. It was a solid lime stone rock. It was covered with prickly pear brush and mesquite, some mesquite brush over it. The brush was growing. The roots of the prickly pear and brush were all interlaced, around the rock, showing that the rock could not have ben set there after those things were growing. The growth was at least 15 years old, further than that I could not say, but it had been there that long, been there a long time. On that same trip I went to the El Poso corner, which is the corner of the Finados and of the Las Barrosas. The N. E. corner of the Finados calls for the Lindero del Poso. Now supposing that I am right in the location of the Paso Ancho, the proper location of the N. E. corner of the Finados would be reached by a continuation of the lines due South from the Paso Ancho, as I locate it. On that same trip I went to look for the rock at the El Poso corner, but
181 did not find it. Then on the 11th of Nov. or the 10th, I went out there again with the Mexicans and Mr. Kenedy, and Mr. Kenedy pointed out a rock at the Poso corner. This was also a lime stone rock. It was pointed on the top. It did not stick up over two or three inches. It was in a clump of zacahuistle. We dug down and the general size of the rock was 7 by 18, and it

ran down 27 inches deep. This rock, at my suggestion, we raised up, so that it now stands up about 8 inches high, it being entirely buried, the sand had drifted over it some. The rock lay west of the lagoon, which I have marked Poso on my map, a very deep depression, which probably always contained water, it being now in the sand. It is West of it, about 500 varas N. W. about 400 or 500 varas. The rock is right there, it is marked in red ink on my map. I should have marked it in black ink, and I would like to change it now, because I see the black lines indicates objects, but I put that in red ink. The rock was about 500 varas North and 2000 varas West of the N. E. corner of the Finados, as indicated on Mr. Maddox's map, that is, from the patent corner, and is about 125 varas North, and 2500 varas west of the fence corner. That stone has been there certainly as long as the others, I should say that is the sand rock. The bottom had broken off, had some sand in it. It might be mixed with lime, but it had been there all the time. It had roots all round it, and partly into it, into the soft part of it, so that they were sticking to the rock,—the roots. The region around the Paso Ancho is not a rock region. The rock that we found there was brought there. There was no rock anywhere near, and the rock which I have described as the N. E. corner of the Finados. There is no rock at all in the country there. We could not find any near the region. Sometimes when the sand is blown off in that country, there are no out-croppings of rock, but there is none there. This rock had been placed near there. On the same trip that I was out there with Mr. Kennedy and the Mexicans, on the 4th of November, I was shown a rock at the point indicated in red on my map as the N. E. corner of the Santa Rosa de Arriba grant. We went over there, a. 'hey having found the rock, one of the old men
182 that knew the rock years ago, pointed it out to us, Mr. East, Mr. Hyman and myself being present. That rock was on a large bluff. There is a high bluff along the creek there. It is probably 100 to 200 varas from the bank of the creek. It is entirely covered with prickly pear and brush. There is a little mesquite bush, which is something over 2 inches in diameter, grown right up by the side of it, but it is not over an inch or an inch and a half. The rock was all covered with a little growth of prickly pear, tacejia, which is a species of cacti, and there is an ant bed there. The rock is 10 x 12 x 24 inches. It gets pointed. We dug down on the north side of it to the bottom. It is 24 inches deep. It is 10 inches at the bottom, and it comes up to a point at the top. It is about 12 inches square at the bottom and about 2 or 3 inches across the top—say 6 inches. It is an old gray looking rock, it had been there many years, and about 2 inches of it was sticking above the ground. The growth must have been anyways 15 years old,—I should judge, 12 or 15 years. I mean that it would have taken 12 or 15 years for the growth to have formed around the rock, how much longer it may have been, I couldn't say. The roots of the growth were all interlaced around the rock, it could not have been placed there since the growth occurred. It had been there a long time. There are no rocks like that in that neighborhood. There

are small pieces broken off the rock, but I don't think there are any pieces anywhere near as large as that in that vicinity or near there. There is nothing in the original Santa Rosa de Arriba grant to show just where the inset is located, which it is recited in the original grant was made by Pedro Villareal, except as we can get it by scaling the map contained in the copy of the original grant. Supposing the East line of the Santa Rosa de Arriba is correctly shown in red on my map, there is a lake at the point indicated on my map, in pencil, and which I had previously incorrectly shown in ink lying to the Eastward of the red lines indicating the Eastern boundary line of the Arriba. If the Eastern boundary line of the Arriba is located as contended by the defendants, all of that lake
183 would be to the westward of the Eastern line of the Arriba.

The red line shown on my map as indicating the Eastern boundary line of the Arriba, represents a line drawn due South from the rock which was pointed out to me, and about which I have testified,—that is, due South, with the variations. I have not run that line at all. I just connected it with the rock, from the distance we had and the meanders, and drew it parallel to the line we had over there to find the rock. The red lines indicating the boundaries of the Arriba grant, and the red dotted lines on my map South of the Olmos Creek are located with reference to the rock above *em*ntioned. We did not do any surveying West of the line of the Encinal, as shown on my map. Mr. Dix and myself went out West from that line, following up a swale for about a mile, I should judge. We made some inquiries but saw nothing of a laguna. Running the Western line of the Encinal, as indicated on my map, and on Maddox map, there are two swales along there, a swale is a flat, one is a wide flat, but no laguna or anything that looks like a laguna. The red line on my map indicating the boundaries of the Encinal I did not run, I simply constructed that survey as indicated by these red lines from the West line of the Arriba by fitting it to the bends of the creek, as I have heretofore testified. If the Finados grant is located by beginning at the rock pointed out to me as indicating its N. E. corner, and by running thence West the distance called for in the original grant, it would put its N. W. corner north of the Jarita lake about 350 varas, and about 1000 varas to the West of it. The Finados grant calls for its N. W. corner to be the Lindero de la Jarita. It does not call at distance. It calls the corner to be the Jarita, to be in that vicinity somewhere generally, half a mile or a m'le. When they call for natural objects they are generally that distance.

184 Redirect examination.

I know from the history of these grants that the La Parra was made by Domingo de la Fuente. I know that both this grant and the Paistle were confirmed by the Act of the Legislature, in 1852 and that Felix A. Blucher made a survey under that Act of the Paistle grant, and the green line on my map indicate the patent lines. The patent issued by the State of Texas establishes this green

line as the common line of the Paistle and the La Parra. That is the way it is patented. The Finados was originally surveyed by Canales in 1833, and resurveyed by Blucher, and patented and the green lines indicates the patent lines. The green lines all the way around indicate the patent lines of the grant, so far as they have been patented. The Santa Rosa de Arriba was also confirmed by the Act of 1852, and was resurveyed by Felix A. von Blucher in 1859. I don't show these lines in green because it has not been patented. The Blucher resurvey of the Santa Rosa de Arriba is shown in black. The Tule was resurveyed by Blucher, the official surveyor in 1859, and these green lines indicate his patent lines. The Encinal was resurveyed first by Daugherty, and then by Salinas, and was patented on the Salinas field notes, and the green lines indicate the patent lines of the Encinal grant. The patent lines of the Tio Ayala are also indicated in green. If the East line of the Paistle, and the West line of the Parra are, as shown in red on my map, it will take the Paistle away from its patent line as established by the survey of Blucher. To construct the Barrosas on the Paistle, as indicated in red on my map, will tear the Barrosas away from its patent lines. To construct the Encinal, as indicated in red on my map, will tear that survey away from its patent lines at both ends. To construct the Tio Ayala, as indicated in red on my map will tear that survey away from its patent lines. To construct the Tule from the Purgatoria hill, and from these conformations of the creek, as I have indicated in red on my map, tears it away from its
185 patent lines, and will thus either tear it away from its connection with the Loma Blanca, or give over to the Loma Blanca or the Tule a large excess. To construct the Parra as indicated in red on my map, would make the Paistle conflict with the railroad surveys which are supposed to cover the old Santa Rosa de Abajo grant. The Paistle belongs to Mr. Kenedy. The Paistle, the La Parras, the Barrosas and the Finados all belong to Mr. Kenedy, and if these grants are constructed as indicated in red on my map, it will result in an increase in Mr. Kenedy's land of about 9500 acres. If the N. W. corner of the Parra and the N. E. corner of the Paistle is located as indicated in red on my map, and this common boundary line is run South from that point, I will have to extend that line about 2000 varas in order to reach my Southern boundary line of the Parra, as indicated in red on my map, and when I turn East from the point thus reached, I will have to extend the line about 2000 varas above the calls in the original grant to reach the Tioculas mott. I have never found in the originals of the La Parra, the Paistle, the Santa Rosa de Arriba, or the Abajo grants any call for rocks at the points I have testified to having seen pointed out to me. The surveyor says he told the owners to put up monuments of rocks, but he does not call for any rocks in the grants.

The line which I have testified to being across the Olmos Creek a little East of the patent corner of the Tule is about 500 varas, estimated from the patent corner of the Tule. Mr. Kenedy did not tell me that the rocks at that point I located the Paso Ancho at,

or any of the other rocks about which I have testified, had been found before I went out on the survey with Mr. Maddox, or during the time that I was on that survey. He told me that there ought to be a rock at the Paso Ancho, but did not tell me that it had been found until after the survey by Maddox had been completed.

186 Redirect examination:

There is on the Maddox map near the N. E. corner of the Abajo grant and there delineated a bend of the creek to the North, as shown on the map by the original surveyor Canales, and about 500 varas east of the N. E. corner of the said Abajo grant, as shown on my map in red, there is a sharp bend in the creek to the North which extends about 2200 varas North. The distance called for in the original grant of the Abajo in the length of its east and west lines is about 2200 varas. The west line is called for as being 2200 varas longer than the East line. If the East line of the Abajo is located as claimed by the defendants, and then extended up the creek, the excess in distance in the East line over the West line, after making the allowance of 1000 varas, which as claimed by the defendants, should be allowed, because the line in the original map, does not reach the creek in about 2200 varas, that is, the East line would be 2200 varas more than the West line. If the original corners and lines of the grants are, as indicated on my map, in red, the conflict between those lines and the patent lines would all originate from the fact that there is a mistake by the surveyors who made the surveys, by virtue of which patents were granted. Such a mistake would account for the difference between the patent lines and the lines of the grant, as indicated in red on my map. If the Santa Rosa de Arriba is located with reference to the corners as can be ascertained by the bend of the Olmos Creek, and the course and distance given it, there will be no conflict in the East with the original survey of the Paistle and Parra, as located from the Paso Ancho, and all the surveys will fit in, except that there will be an excess of 4.6%.

187 MARTIN HANSON, a witness for the State, testified on direct examination, as follows:

I am County Surveyor of Cameron County and have been for about 12 years. I have done some surveying around the Santa Rosa de Arriba grant. The first was in 1900, I think. This witness testified that he ran from the Paso Ancho South and found some stumps of trees along that line at the point indicated on his map as the Trancas. That he ran South on this line, then ran the course and distance called for in the Barrosas and Encinal grants to reach the Western boundary of the Encinal grant, as indicated on his map, and that near that line he found a lake, the name of which he was told was the "Leoncitas" lake which is three or four hundred varas long, and about 50 varas wide, and found another lake near by the name of which he did not learn. He further testified that if the N. E. corner of the Encinal is placed at the S. E. corner of the

Arriba, as claimed by the State, and the Encinal is constructed on this point by running course and distance to the West, the West line of the Encinal will come within three or four hundred varas of the lake which is sometimes called the "Labitis" lake. He testified that he had marked this Lake on his map, as probably the San Antonia del Encinal, but now called "Labitis," because the original grant calls for the Encinal Lake. That was the reason he says on his map that it probably refers to it. He testified that this lake was about 2400 varas West from the patent line of the Encinal. He further testified that the mott which Mr. French had testified was called the "Sorillo" was the only mott in that immediate vicinity. He further testified that he, at another time, ran the East line of the Santa Rosa de Arriba, as claimed by the defendants, and that in running that line, he passed a lake the name of which he did not know, which was to the West of the line.

On Cross-examination he testified that when he ran the West line of the Encinal, and found the Labitas Lake, he was working for Mr. Kenedy. He further testified that in making the survey for
188 the Parra, he adopted the Cocke corner as the Paso Ancho, the same having been pointed out to him by Cocke, and based all his work on that. He further testified that the country around what he has referred to as the Sorillo mott is a prairie country. This is the same mott shown on the Maddox map as the "Mota de Llano." Witness testified that "Llano means prairie, and that this mott is the only prominent mott in that vicinity.

DANIEL JOHNSON, colored, a witness for the State testified:—

My name is Daniel Johnson. I live in Corpus Christi. Have lived there since the San Jacinto battle, and am 75 or 80 years old, don't know exactly. Went to Corpus Christi with General Taylor's army. Don't remember the year, was quite young. Crossed the Olmos Creek at Los Animas. I know where the Paso Ancho crossing is. Los Animas crossing is up the creek from the Paso Ancho. There is no crossing of the creek below the Paso Ancho to my knowledge. After going to Brownsville with General Taylor's army, I came back into this country more or less a couple of years after. Crossed at the Paso Ancho, coming by the Parra and Mr. Kenedy's ranch. That was about 2 years after General Taylor's army went down. After that I was never at that crossing until I was freighting during the Civil War. I then crossed that crossing off and on for two years, or longer, steady. I was at that crossing about two weeks ago. The occasion of my going there was that Mr. Kenedy sent for me to see if I could recognize these corners. I found the old crossing. I found a mark set up, a land mark set up on the hill. The crossing I was at two weeks ago is the same place it was when I first knew it. The land marks might be a couple of hundred yards from the crossing. While I was hauling cotton I knew of three or four roads coming in from different directions to that crossing. They all lead from Brownsville to different points. When I was
189 there two weeks ago, there were signs of the old road it had been growed up. Of course the ruts being so deep, they never

did close up. I never did cross the Olmos Creek, with a wagon or otherwise below the Paso Ancho crossing as I have described it. I tried it once on horse back, and like never to have got out of it at all. When I was there two weeks ago, they found the land mark. It was on a knoll, the road was West of it. It is a stone. It is covered with prickly pear and mesquite I went up there and examined around where I thought it ought to be, and I was walking around and found it. It was covered with a little sand, leaves, and things. I first saw that stone when I was freighting, from Brownsville to Corpus Christi,—backwards and forwards. I don't recollect that I saw it when I came back from the Army at all, it was only when I was freighting from Corpus Christi to Brownsville, when cotton commenced going through the country, but when I came back from General Taylor's Army, I didn't know anything about that rock. Did not see it. The way I came to notice it when I was freighting was that there was water to the right hand side of it, and after we got across this crossing, we would sometimes turn our teams out to water, and in traveling over the hill, we came across that stone, but I never did inquire where it was or nothing about it, and didn't think nothing about it. I thought to myself it was curious the stone was there by itself, and nothing else, but I never made no reference about it. When I first knew it there was nothing growed there at all, but the grass, when the grass was up you couldn't see it, it was only when the grass was burned off that you could see it. A person going along, riding, or driving, and not noticing, they would never see it. This witness also testified that he knew the Trancas mott, that he would camp over night at the Trancas mott when he was freighting cotton, and that the Trancas mott was two or three miles North of the Olmos Creek.

190 CASIMIRO RODRIQUEZ, a witness for the State, testified through an interpreter, as follows:—

I was born in 1834. I live now at Nursery, between Victoria and Cuero, in Texas. I know where the Paso Ancho of the Olmos Creek is, I was first there in 1854 or 1855. I was there again this month. I went there because I had a letter to me to come. Fernando Gonzales was there with me when I was there this month. In March Fernando wrote me to come, and I couldn't come then because I was sick. Don Fernando was with me, and I think the coachman, the driver of the buggy, only those three, no one else. I know a rock sunk in the ground at or near the Paso Ancho, I first saw it in 1854 or 1855. I am not sure. I saw it after that. He said that the occasion of his seeing the rock in 1854 or 1855 was that there was a gathering there of the stockmen from the Palmito, and also Alvino de la Garza, he was the owner of the La Parra. That was the La Parra ranch. It was a ranch at the time. There was a gathering of cow men almost at this rock, and while there Don Alvino showed it to us, and said that this stone was the corner stone dividing his land from the Paistle, the La Parra from the Paistle. It was on a higher hill, but it was covered with a good deal of grass, nothing but prairie grass. When he went there a few weeks ago, he

found the country very much changed, there were little thickets of brush, prickly pear, and other growth. When I was there two or three weeks ago, I found this stone myself. I located it. I knew where the Trancas mott was. It was to the South of the Paso Ancho, in front of the Cobos mott. The Trancas mott is about three or four miles more or less from the Olmos Creek. The Brownsville road ran in a southerly direction from the Olmos Creek at the Paso Ancho, and then on to the side of the Cobos mott. Ran very close to the Transcas mott, it ran between the two motts. To the East of it Alvino pointed out to me the direction from the Paso Ancho of the land between the Paso Ancho and the Parra. He pointed in a
southerly direction towards the Poso. He was not speaking
191 to me but he was speaking to Leandro Pederal, he told him
to watch out, that his line run in that direction, between the two tracts of land, to watch that, meaning to guard it. They were standing, at that time, at the corner stone at the Paso Ancho, he pointed in the direction of the Trancas mott, the Cobos mott is also in that direction. He pointed in a south direction from where they were standing. I know where there is a stone, several miles South of the Paso Ancho, and I showed that stone to Mr. Kenedy within the last month or so. I first saw that stone in 1854 or '5, while we were chasing wild horses on these lands. Don Prudencio Ynojosa, and some men from the Palmito showed me that stone. Ynojosa was the owner of the Palmito grant. Ynojosa pointed out this stone and said it was the corner stone that divided the land of the Finados and the Barrosas, and that this boundary line would pass by the mott called Cerito that strikes the lagoon called Jarita. I saw that stone afterwards it was on the land that I worked over for a few years. I showed that stone to Mr. Kennedy about 8 or 10 days ago. Fernando Gonzales was with him at the time, and so was Mr. French. I knew where the Tresquila is, there is a lake there, also, first knew that in 1856. Have not been there since 1884 or '5. The lake is on the South side of the hill. It is a large lake, it is called Tresquila Lake. There is a drain or slopp that runs down to the S. E. of the Tresquila Lake into the Lake or Lagoon called Leoncitas. I calculate that it may be ¾ of a mile or a mile or a mile and a half from the Tresquila.

Cross-examination:

I was born in Mexico in 1834. I worked for Don Alvino Garza three or four years. Can't tell very well. I have a hard head and can't remember things at that time. This witness said that he worked for various people, and among them, Mr. Kenedy and the Santa Gertrudes. Said that he worked on the Bonados, and after that, he worked for Mr. Kenedy, and worked for him a number of years at the La Parra. He left their employment in 1887 or '88.
I worked both at the old Parra Ranch under Don Alvino
192 Garza, and at the New Parra Ranch, under Capt. Kenedy.
The old ranch was at the edge of the Encinal, it was about six or seven miles from the Olmos Creek, don't know exactly. Don't know exactly how far it is from the Cobos mott, about a mile or

¾ of a mile. Doesn't know the points of the compass. Can't tell whether it is East or West, know- that the Parra ranch is East of the Old Parra Ranch. At the time he first saw the rock near the Paso Ancho in 1854 or '5, there were 12 or probably more men there, most of them are dead. They met there to have a round up. They did not get down off their horses. The rock didn't stick above the grass, it stuck out of the ground about six inches. Said he never showed this rock to John Kenedy or any one else before April. Nobody ever asked me about it during the time that I worked at the Parra ranch for Capt. Kenedy for four or five years before 1887. I never showed any body the rock or told anybody that it was there. I first told them in March of this year, being an old employé of the place. In March I received a letter from Fernando Gonzales in which he asked me if I knew where any of the corners of these lands were. I first saw that rock in 1854 or '5. I saw it after that in passing by. I saw that rock in April of this year, and it had been a long time since I had seen it before that time, not since 1887 or 1888. When we saw that rock Fernando and the driver were the only ones present. On the first day we worked all day and looked for it, and could not find it, and on the second day we found it. Don Fernando wrote to me in March but I could not come, and he came for me in April and took me on the train. Where we found it the rats had made a nest around there. When we found it Don Fernando said not to touch it, and that we would go and see Mr. Kenedy, and we went to the ranch. The next day, Mr. Kenedy, the coachman, Don Fernando, and myself returned and I showed the rock to Mr. Kenedy. Then Mr. Kenedy asked me if I knew of any other corners, and I told him that I knew of one called the Poso corner. Just after this, I received a letter that my family were sick, and I left without showing Mr. Kenedy, on this occasion, the rock at the Poso corner. I found the rock at the Poso corner during this month. I saw that rock first in 1854 or '5, all the people
193 around there knew about it in those days. I don't know of any other corners in that country. I know where the Tule Lake is. I think I know where the Mota de Llano is. I don't remember where it is, it has been a great many years since I was out there. There is a Purgatoria hill, but I don't remember exactly where it is. I knew the Purgatoria hill in those days, think it was on the side of the Olmos on the north. Some distance down from the Paso Ancho Purgatoria is on some rise or little hill there some distance. I knew a great many places and points in those days, but I have forgotten them now. In those days there were a great many places, objects and motts and other things that we knew in passing backwards and forwards over the prairie. I have forgotten a great many of these points now. I don't know any such place as the Montenegro. I know where the Loma Blanca is. They used to call it the Red hill. I know of a place called the Mota Negro, don't know where it is, but only know of the place. Didn't see the Trancas mott when I was there this year. Didn't go to the place where it was. There are no trees there. There may be stumps, but there is nothing to show that there has been a mott there. Don't know where the Jarits Lake is. I have heard of the La Jarra lagoon men-

tioned. Don't know where it is. Heard it spoken of frequently. Knew where the Santa Rosa Lake was in those days, but after it was fenced he did not go there, did, not know about it any more.

FERNANDO GONZALES, a witness for the State, testified through an interpreter as follows:—

My name is Fernando Gonzales. I was born on the 30th day of May, 1837, and am about 68 years old. I live at Corpus Christi. I know where the Paso Ancho is. I first knew where it was in 1863. I was there in January of this year. Went to Mr. Kenedy's ranch to see if he would let me have 400 acres of land, and I passed the Paso Ancho in going there. The Paso Ancho is now in the same place that it was when I saw it in 1863. I was there in
194 January of this year. I was at the La Parra in company with Mr. Casimiro Rodriquez in April of this year. I went to get him so that he could come and show us where the stone was that he had known. I went after him by the order of Mr. Kenedy, who came to me at Corpus Christi in March, and asked me to look around and see if I could find any one who had worked for the La Parra in the old days, as he might know some of the corners, and he asked me if I knew of any of the old people who lived around there. I told him that I knew several, among them, Casimiro Rodriquez. He asked me to as soon as I could find out where any of them were, and when I did to write them and ask them if they knew there was a corner stone at the Paso Ancho, or some other corner, or any corner or any place. I wrote to Casimiro Rodriquez and he wrote me stating that he knew where the corner stone at the Paso Ancho was. He answered me, giving me some signs of the place where the stone was, and I wrote a letter to Mr. Kenedy, and he, myself and the coachman went over to see if we could find the rock. We couldn't find it. We looked for it all that day, and returned to the La Parra ranch. The next day I returned with the coachman, and we again looked for it and we didn't find anything. Mr. Kenedy told me to go for Casimiro and bring him here. I went, found Casimiro at his home and brought him back. We arrived at the place, and the next day Casimiro and myself in the buggy together started and arrived at the La Parra. We arrived there late at night, and camped there late at night. On the next day we looked for the rock all the day long. We did not find it. We slept there that night, and the next day we again made a search for it, and, after some difficulty, Casimiro found it in a clump, a large thick clump of prickly pear and shaparal, and that kind of mesquite *with* runs along the surface. When Casimiro found the rock I was looking for it in some other place, and, when he found it, he called me over and showed it to me, where it was, and I could not see it on account of the nopal and the weeds and all of the other things, and he came out where I was standing, and right in through the thicket where he was I saw a little of it. All I could see
195 was a little edge of it, from where I was standing. We then went to the La Parra. I had never seen the stone before. The rock was about 150 yards from the Old Paso Ancho crossing, as I

knew it in 1863. There was no crossing below the Paso Ancho crossing, that is, towards the bend, not then, not now, and never has been. After we found the rock we went to the La Parra ranch, and told Mr. Kenedy and the next day Mr. Kenedy, his coachman, Casimiro, and myself went to the Paso Ancho. When we arrived there we showed Mr. Kenedy the place where the rock was. Mr. Kenedy couldn't see it at first on account of the nopal in the thicket, and all those things there, and they suggested that he let me cut a little opening through the nopal through the thicket, so we could get closer, and Mr. Kenedy instructed us not to touch a thing, not to touch or move anything. Then he went in, Casimiro had gone in then he and Mr. Kenedy took a long iron and uncovered the rock so that we could see it, then he took the iron and struck the rock to see whether it was fixed rock, or a piece that could be moved with the iron. When he became satisfied what it was, he then ordered us under no circumstances to touch anything about the place there. I know where the Trancas mott is. It is South of the Paso Ancho. The road from Brownsville to the Paso Ancho ran on the East side of the Trancas mott. The road would be at places ¾ of a mile, and other places a mile, and at other places a half mile. I know where the Cobos mott is. The Cobos mott was buried by sand dooms. There is not a tree at the Trancas now. The only thing there is in the stumps which I went down there with the surveyor to show him the spot, the place we found a few stumps there. Recently, when I went with the surveyor, the stumps were at the same place as the Trancas mott, as I knew it. I know about the Poso corner. I was out there recently, and made a search for it. The first time I went there I went with Mr. Kenedy, Mr. French, the coachman, and four or five others that we took there to help us. We searched for it and could not find it, that is, the zacahuistle grass around there, and we returned to the ranch. That was about two weeks ago, more or less. After we had shown
196 Mr. Kenedy the rock at the Paso Ancho, Casimiro Rodriquez returned home. He received news from his family that his wife was very sick. The day after I had gone with Mr. French and Mr. Kenedy, and we did not find the rock at the Poso, Casimiro arrived at the ranch, and Mr. Kenedy told me that night that *that* Casimiro, myself and the coachman should go there and look for the rock. We arrived there late in the evening, and we camped there, and the next day we commenced to search over the place that we had burned over previously and we did not find it. Mr. Kenedy having instructed us to burn everything around there as far as possible and to make further search and to satisfy ourselves whether there was a rock there or not, we burned the zachuistle that remained, the grass that remained, and we tied some big roots together, and made a sort of broom or sweep out of it, and commenced to sweep up the ashes of the burned grass. In that manner Casimiro found the rock, which was very deep and just raised a little bit out of the ground about 2 or 3 inches, probably 3½ inches, very small, just about the surface of the ground. We then returned, came back very late, and stopped, and camped at the Barrosas. The next day

we went to the La Parra and informed Mr. Kenedy that we had found the rock. Then Mr. Kenedy, Mr. French, Casimiro, and two other men that were there, and Mr. Hyman and Mr. East went to look at the rock, but Mr. East was not present when Mr. French went back on that occasion to look at the rock.

I was present when there was an examination made of the Poso rock. Mr. French gave instructions that it should be uncovered on one side, just to dig out on one side, and Mr. Kenedy was the first who attempted to break the dirt. He started to do the work himself, but it was so tight by the roots of a nopal and other things that he could not do it, and he called his servant to do it, and they commenced working and taking out little pieces of grass which was attached to the rock. He opened a hole until the edge of the rock below was uncovered, the width of the rock and on both sides. I was present when there was an examination made of the stone at

197 the Paso Ancho, the day the surveyor and others uncovered it. Mr. East and Mr. Hyman, Mr. Kenedy and Mr. Casmir Rodriquez, myself and Mr. French and the driver were there. The surveyor gave instructions to cut away the nopal and cut away the mesquite that was over the rock sufficiently to uncover the rock, and then uncovered all the rock down to the side, and also one side of the front and width to the front, and when this was done Mr. French next measured, and after he had measured it he then gave orders that the hole should be covered up again.

I know where the Alcatraz is. I have known it since 1864, since I first began to work on the coast. I have known it continuously since then, because I used to cow hunt all over the land there. I was not present when there was a stone found there. I was not present when it was dug up there, but I was present when Don Alvino Zamora went to show it to Mr. Kenedy. I never had seen the stone near the Alcatraz before the time it was shown to me on that occasion. It was on the upper end of the mott of chapparral, the western side, very close to the Aroya de Olmos mott, not over fifty varas.

I know where the Tresquilla is. I have known it since I first commenced to work on the coast there, to the west of the old range road near the Barrosas, in a westerly direction from the gate of the Barrosas. To the Tresquila about 2½ miles, more or less, is the hill of the Tresquila, and on the south side of this hill is a lake or lagoon, striking the hill. The water comes up the hill, which serves as a bank of the lake. This is the place that I know is the lagoon,—the Tresquila hill. They were not known by those terms when I first knew the country. East of the Tresquila the dip runs until it forms a large lake just between two sand hills. It is a long hill between two rises, one being on the north side and the other being on the south, and in the middle is the lagoon. That is known by all the people as the Leoncitas.

The Leoncitas is probably a mile or three-quarters of a mile from the Tresquila.

I showed these places to Mr. French and to Mr. Kenedy.

198 I showed them also to Mr. Hyman and to Pedro Peredes. He went also. Antonio Maco was there and there were quite a number with him and Mr. French.

The lake I showed them was known by the name of Tresquila. As far back as I was acquainted with the country, there was no other hill like that along that lagoon.

I know the Santa Rosa lake. It is about northeast more or less from the Tresquila. I can't tell the distance but there is a great deal of thicket. It is probably four or five miles, more or less, the way they go.

I know the location of the old Parker ranch. It is north of the Santa Rosa Ranch. Don't know whether it is there now or not. I have not been to the Santa Rosa Ranch for 20 years. There are signs to the south of the old Parker Ranch where a fence had been, because you could see where it had been, besides that there were some yellow berry bushes grown up there where the house or whatever had been there stood, the fence or corral or ranch proper. There is none there now. When I first knew it there were some little huts there, not exactly houses but huts. I was with Mr. French and these other gentlemen when they went up that line to the Santa Rosa Lake. I showed Mr. French where the old ranch had been.

Cross-examination:

I went out to Casimir Rodriquez in April this year and brought him to Corpus Christi, and then took him out to the La Parra Ranch. We went to the Paso Ancho, and were there two days until we found the rock. I didn't stop at the Parra Ranch on the way to the Paso Ancho. Didn't go to the Parra ranch until we found the rock. When we found the rock at the Paso Ancho nobody was with me except Casmir Rodriquez, just he and I alone. We arrived that night and stayed there the next day and the next night and next day until about ten o'clock, more or less, until we found the rock. I looked for the rock before that but didn't find it. Mr. Kenedy and myself looked for it and attempted to find it. Myself and
199 Casmir Rodriquez went there and stayed two days in April and found it, and then went up to the Parra Ranch and told Mr. Kenedy that we had found the rock. Mr. Kenedy at first asked me to try to find somebody that would know something about these corners and marks. He didn't pay me a thing for finding this corner. He paid my expenses whenever I was doing any business for him at any place. I have testified that Mr. French, Mr. Kenedy and a number of other gentlemen first went and looked for the rock at the Paso Ancho corner and did not find it, and then I went to the Paso Ancho corner and did not find it, and then went to the Parra Ranch and the next day Casmir Rodriquez came back to the Parra, and he, myself, Macedonia Salinas, the coachman went back to look for the rock at the Poso corner. We got to the place and looked for the rock the next day but could not find it. We then burned the remainder of the grass and searched for it and found the rock between one and two o'clock in the afternoon.

Nobody was there but Casmir Rodriquez, the coachman and myself. We then went back and told Mr. Kenedy that we had found the rock.

PEDRO PEREDES, a witness for the State, testified in Spanish, through an interpreter, as follows:—

My name is Pedro Peredes. I live at Matamoras, Mexico. I am 64 years old. I used to live at the La Parra. I know where the La Parra is. I first knew it when I came to live at the La Parra when I was about 12 years old, in 1852. My father was paying rent as a tenant to Don Alvino Garza, who owned the La Parra.

I know of a stone near the Paso Ancho crossing. I know it because Don Alvino Garza, from whom we were renting, showed us this corner that we could confine ourselves to his land. The stone was on the top of a little hill near the arroya. Don Alvino Garza first showed it to my father, and when I got older and commenced to work my father showed it to me. It was to the west of the crossing called Paso Ancho. I can't say exactly what distance, but it
200 was some little distance. Cannot say exactly in yards, but it was about a mile, but at the time there was a crossing, and then there was another crossing made afterwards further down. But at that time it was close to where the crossing was then. It was a mile from where they call Paso Ancho, but at that time it was close to what was then the Paso Ancho. I cannot exactly recollect but it was very close, about two hundred varas more or less, and in the old days still more closer. There were different roads at different times right out there, but the crossing itself was the same crossing. I have been there recently, when Mr. Kenedy sent for me, because he knew I lived out there and saw the ranch. According to my remem*ber*ance of the rock as I knew it, there used to be a little hill and I think it is the same place now.

In those days it was prairie land—llano—but now he says there is a good many nopal and there are mesquite there now, and yellow berry and prickly pear. In the old days I would go there and live and come back, but I finally left and came to Mexico, in 1867 or 1872, I don't remember when I went to Mexico. I saw that rock on-e or twice after I first saw it until I left there. I never knew of any crossing of the Olmos below the Paso Ancho. Don Alvin Garza was the owner of the Parra, and said that was his corner.

I remember the Trancas mott. It was a little bit to the west of the Paso Ancho, a little to the southwest, between south and southwest. I cannot recollect very closely how far the Trancas mott from the nearest point on the Brownsville road, but think that it was over a mile. Can't tell exactly where it was, being a very long time since he has gone over that road.

I know the Tresquila. I used to cow hunt there. The hill of the Tresquila is west of another lake which I do not know the name of To the west of this lake that I do not know the name of is a hill, and to the south of that hill out in the center is the lake. That is the Tresquila Lake. The Tresquila lake is right along side of the Tresquila hill.

I would go there some times and it would be deep water,
201 and some times salty water.

I know the Santa Rosa lake. There are signs there of some old ranch that had been abandoned very close to the lake. When I

first went there there was nobody living there, but afterwards I saw people come there and stay there.

I was present recently with Mr. French at the Tresquila, about the third or fourth of this month. Mr. French asked me where the Tresquila was, if it was there, and I told him yes. I showed it to him. I pointed out the Tresquila to him. The place I pointed out was the one I had known as the Tresquila. It is a place or point that is well known.

I also pointed out to Mr. French and the other gentlemen that were at the place where the old ranch had been, the old ranch I have just described near the Santa Rosa lake. There are some woods down there. There are two points they call the Mirasoles, one is an old ranch near the Laguna Madre. There is another point up there called the Mirasoles, on the Arroya de los Olmos. On the south side on the edge of the Arroya there is a bend there that is formed by the Arroya, that is called the Rincon de Tio Pancho, the bend of Uncle Frank. This bend is on the north side of the arroya. Standing there you can see this bend of the Tio Pancho and from there it continues to the north. The Mirasoles is out in front of this bend. Right there at this bend in the arroya is where the corner still was, that corner and point of the Mirasoles. The point or corner is on the south side of the arroya, where the bend is, and the creek would go to the north forming a bend. I do not know how far north the creek goes.

In 1865 was the last time I saw the Paso Ancho before this year. My father first rented from Alvino Garza in 1852. It was in 1857 or 1858 that Alvino Garza told my father where the corner was, and about a year after that my father told me where it was. I was not present when Alvino Garza told my father. All that I know about Alvino Garza showing my father where the corner was, is what my father told me. I never told anybody where this
202 corner of the Paso Ancho was, because I had never been asked about it. The first time I told anybody was when Mr. Kenedy sent for me and told me I had to come. He knew I had lived out there in those years and wanted to ask me for some information in regard to the land. That was the first time that I ever told anybody about it. That was this year. It was September when Mr. Kenedy wanted to see me and spoke to me about it. Mr. Kenedy first spoke to me, then sent for me to come. I came along to the Parra Ranch the second or third of this month. I came to the ranch, the surveyor was there and Mr. Kenedy and some other gentlemen whom I did not know. I had not been there for some years, and we went to the point where we got the rock already mentioned. They had found it and it was there. The place was covered with mesquite and nopal and Mr. French gave orders to have them clear it out. When we got there Mr. Kenedy asked me if this was the place which I knew, and then I got out and fixed myself on the little rise that used to be there and told him I thought it was, I had not been there since 1865, the place had changed very much but I knew the place. There is no no*apl* or prickly pear there. Mr. Kenedy asked me if this was the place where I had known a road, and I looked around and

recognized the little lagoon on the east, and from there I recognized the place. I was asked whether this was the same rock I saw in 1855 and 1852 or not. All I know is that it was on the place where I saw the other lake and other rock. The Trancas mott was not a very large one, a small one. I don't know how many trees there were in it. They were not very large trees, they were averaged size. The Cobos is a large mott, not very large, the road passes close by. I do not know whether that mott is there or not. I saw a large sand dune but did not see the mott. I didn't go to the one I looked at. I looked at the sand dune and it was about where the mott was.

I know where the Tio Coulas mott is. The south boundary line was there at the time I knew it, but I didn't know where they were.

I don't know whether that was the Alvino Garza lands, or
203 whether they have told me whether it was or not. I do not know where the Monte Negro is. May have heard of it. There are a great many points I probably never heard of, I do not know.

There is no ranch near the Santa Rosa Lake, but that was in 1862, when I saw some ranch people who were evidently taking care of sheep coming down at different times along the line there. There were some little huts there, they were not anything but huts. There were people living there and they would perhaps go to the old swale lake near by. Where they lived was not worth anything, could not call it a house, habitation, house or anything of the kind. I saw them living there but there was no place you could call the ranch. In 1852 there was no house there at the place where the old ranch was, but in 1862 there were some people there. A ranchman living there in 1858 when I commenced acting as cowboy. There were no jacals there, but there had, it seems to me, been jacals. There were indications that there had been a ranch there at some time. I did not know the Parkers when they owned that ranch. It has been a long time since I was at the place, but I have described it only as I remembered it in 1862 and 1863. As I before testified, no one had asked me a word about the Mirasoles. I never told anybody that I knew where it was. I told the Attorney General just now. He was the first person that I told where it was. Right here and now is the first time I ever told any person that I knew where the Mirasoles was.

A. M. FRENCH, re-called by the State: Identified the Tresquilas Hill and Lake, which was pointed out to him as such by the Mexican witnesses as being the one marked Tresquilas in black ink on his map, and explained that on the map, the distinction between the Hill and the Lake was indicated. He also identified as the lake which was also pointed out to him by said witnesses, Leoncitas, as

the one so marked on his map in black. He also identified
204 on the map by a mark indicating the same the point where the said witnesses pointed out to him the site of the old ranch, and stated that was in the same place indicated in the Cocke report by an old mesquite tree marked X. The Santa Rosa Lake extends about 150 varas to the west of the east line of the Santa Rosa de Ar-

riba, as claimed by the defendant and the remainder of the Lake is west of that line. The lake is about 700, or such a matter, varas in length. He stated that the point shown him as the site of the old ranch by the Mexican witnesses was about eight hundred varas west of the east line of the Arriba as claimed by the defendant. He stated that he had indicated on his map the site of the old ranch by a little cross.

On cross examination he stated that the Santa Rosa Lake crosses the east line of the Arriba as certified by Felix von Blucher in 1859. He stated that he spoke Spanish and that he had talked with some of the Mexican witnesses, that they, meaning himself and party, had taken the witness on the ground and asked them where the various points were, that he and his party took the Mexican witness down to the Tresquilas after they had dug up the rock at the corner of the Pancho Ancho. He further testified that Pedro Peredes, had told him, French, and the Attorney General, about the Meresolas in the Attorney General's office at the Capitol the day before the witness had testified about the Meresolas. He testified that he had been with Mr. Maddox during the entire time that he was making the survey under the orders of the court except while Mr. Maddox was meandering a portion of the Olmos along the Santa Rosa Abajo.

The following questions were asked the witness and answered by him in regard to the rock at the Pancho Ancho:

Q. Did you know anything about that rock then? (Meaning during Maddox's survey.)

A. I knew there was a rock there somewhere. We had been told there was a rock. Mr. Kennedy told me that there was a rock
205 there that had never been found. We hunted a good while.

Q. When did he tell you that?

A. When I went out there.

Q. He told you in June there was a rock there that had never been found?

A. He said there was reported, a rock.

Q. That had never been found?

A. No sir, he didn't tell me that, he told me there was a rock.

Q. Did he point it out to you?

A. No sir, he said we could find it.

Q. You made a mistake in saying he told you in June it had never been found?

A. Yes sir, I made a mistake in that. I will take it back. I don't remember whether he told me that he found it or not. I don't remember what he said about that, but he told me there was a rock there.

Q. Well, you know he didn't tell you they had found it, did he?

A. I don't think he told me that they had found it, I won't be certain about that.

Q. He didn't show it to you?

A. He didn't show it to me, no sir?

The foregoing questions and answers are given to show exactly what the witness said upon this subject and how he said it, as it is deemed that in no other way can his testimony be shown.

CHARLES HYMAN, a witness for the State, testified that he lived in Corpus Christi, that on the 3rd day of November 1904, he at the request of Mr. Kenedy went out to the Parra Ranch to witness the unearthing of the stone about which the other witnesses have testified, and testified to the person-el of the party substantially
206 as the other witnesses, and as to what was done on that trip substantially as the other witnesses testified, and also described the rocks and the growth around them, and the roots, substantially the same as the other witnesses. He also testified to being with the party at the Tresquilas Lake, when the Mexican witnesses pointed out to Mr. French, and described Tresquilas Lake and Hill, substantially as the other witnesses did. He further testified to being with the party when the Mexican witnesses pointed out the site of the old ranch, and then further testified that the spot was completely overgrown, except in places. There were bare patches, not very large however, and that he noticed some of the men pick up some little pieces of crockery, blue delft, and some pieces of Mexican pottery, outside of that he couldn't detect anything. That there was a depression near the place pointed out by the Mexican witnesses as the site of the old ranch, but he couldn't recall that there was a lake actually there, or any water visible. That he did not learn of the lake called Santa Rosa. This witness was present when the rock at the Pancho Ancho, and the one which the witnesses testified as being at the Alcatraz were unearthed and examined.

Mr. E. H. EAST, a witness for the State who lives at Alice, Texas, testified that he was with the party when the rock which the witnesses testified as being near the Pancho Ancho was dug around and examined, and also when the one which they testified to as being at the Alcatraz was examined and testified to the actions of the party and the bearings and surroundings of the lakes substantially as did the other witnesses. He also testified that he was with the party at the place pointed out by the Mexican witnesses as Tresquilas Lake, and testified in regard to that locality substantially the same as the other witnesses. He also testified that he was with the party when the Mexicans pointed out the site of the old ranch and said
207 he couldn't see much to amount to anything, lots of brush there and some old pieces of dishes and crockery there, and he saw a good many trees that were marked there, but the witnesses didn't know anything about the marks on the trees.

On Cross examination he stated that the party didn't find any old beer bottles around there, and that he went out on this trip at the request of Mr. Kenedy for the purpose of witnessing these matters so that he could testify to them.

JOHN G. KENNEDY, a witness for the State testified:

I live at the La Parra ranch. I am interested in some of the surveys in the neighborhood of the Santa Rosa grant, we, meaning himself and the Kennedy Pasture Company own the Paistle, Barrosas, the Finados, the La Parra, the San Pedro de las Motas, the Palmito and the Leonardo Salinas. The location of the Paistle is entirely involved in this litigation, and I am interested to that extent in the termination of this controversy. I know where the crossing on the Olmos Creek, commonly known as the Pancho Ancho is located, I have known it since 1868. I was present recently when a rock was examined in that immediate neighborhood of that crossing. The rock is about 150 feet from the bed of the creek at the crossing. Since I have known the locality there has not to my knowledge been any other crossing in that immediate neighborhood, none down the stream from that crossing as now located. The bulk of the roads, the greater part of the roads, are old roads leading right down to the crossing, because there were signs of an old road there, old ruts. The condition now is pretty much the same as when I first knew the country in 1868. Of course, these roads have been grassed over, haven't been used for years. There has since been a road leading to the stream, lower down than the crossing
208 coming to the crossing, because when we fenced these lands of ours down there we ran the fence directly in front of the old crossing and built our fence down east, following down the creek. The first change we made was I suppose, about a quarter, and the next as well as I can remember was about a half a mile further down. That necessitated a change in the road coming from our place. We had a ranch lower down, we had a gate put in there and had to come up the creek and come up to the place where the old crossing was and cross there. I know where the defendants claim the Pancho Ancho to be. I don't think there has ever been a crossing at that place. There had not been any since I have known it. There is no evidence of any road going down there to the creek. The roads come in there from the Cobos Mott and come in to the old crossing, and then the roads come in from the east and west from Rocton, Penascal, Pancho de la Mantza Motte, all come west and meet at a certain place about a quarter of a mile from where the defendant claims is the crossing. All verge into one road and then come in at the place referred to and cross at the upper crossing. The creek at the Pancho Ancho corner as claimed by the defendant is pretty wide and I have forded it there. It is mud bottom there and the water varies in depth according to the tide, sometimes I suppose there is four or five feet of water there. Recently I was up there in a boat and boated all around in there where they claim the crossing was and in sailing around there we were not able to stir up mud from the bottom of the creek with our boat. Beginning at the Pancho Ancho and running south from there in a direct line you pass some signs of timber lying to the eastward. I know where the Trancas motte is. I came by the Trancas Motte the first year that I crossed there, but I didn't know it by that name at that time. I first learned

the name of it in 1873 or 4. When I first went through there there were a few scattered trees, very tall, some of them were living and the bulk of them were dead, live oak trees. They had been cut down
I suppose. A great many have rotted away and there is only
209 left there of the first trees I knew the old trunks, although
you find evidences there of where their roots have been. The first time that I ever knew of the rock near the Pancho Ancho was, I think, last March or April. I had heard of it before. I first saw it in April. I know Cassemira Rodriquez. The first time I saw him was in the early part of the '80's '80 or '1. He worked for me. I had made search for that rock before April. We looked for that rock *went* I first went down there. I knew by tradition there was a rock there or ought to be. I went out several different times to see if we could locate it but we were never able to locate it. I hunted in the same neighborhood where we subsequently found it. We hunted from the Paistle fence by this place and a little further down, over a quarter of a mile further down I suppose a half dozen times. I was present last spring when Rodriquez was on the ground. There was present Fernando Gonzales, Rodriquez, and myself and my driver. We went from the La Parra ranch to the place where Cassamira had told me that he had found the rock. (Then follows the testimony of the witness as to what occurred on that occasion, substantially the same as that testified to by the Mexican witnesses. We went back there again with Mr. French, Mr. East and Mr. Hyman. In the mean time I had been up to Austin and had talked with the Attorney General, and he told me to keep the witnesses and I sent him the names, and I then went back and took the witnesses whose names I have mentioned in the party with me, Mr. Hyman, Mr. East, and Mr. French, Fernando Gonzales, my coachman and two or three others and a darkey by the name of Johnson. (Here the witness testified to what occurred on that occasion, substantially the same as the other witnesses). The growth that was around that rock has been there to my knowledge since 1882. It gets heavier and heavier each succeeding year. I know of a stone at the Poso corner. About five years ago I was riding across that country and I saw a little rock in the bottom of this place.
It is kinder of a depression you know and there is a water
210 hole in the center and right away from the water hole I
noticed a little rock sticking up there. I was riding along horseback and I didn't stop to look at it and afterwards the question came up and I thought possibly there might be the stone, there are no stones in that neighborhood. I made a search for it. When I went in September to Brownsville I met the old man that testified here, Pedro Perades and I asked him if he knew anything of the corner stones in that country and he told me he did, among those he mentioned was at the Pancho Ancho, and one he had seen there. I went out there with Mr. French and some others and camped there one night close up and the next morning we burned all the prairie grass around there, the prairie grass, to see if we could expose it and we didn't succeed in showing it up at all at that time. That was about

fifteen days ago. I subsequently saw the stone. After Mr. French and myself got there we went on up to Corpus Christi and I went back to La Parra and the next day I started to Corpus Christi and on the road I met old Cassemera, who in the mean time I had sent for to come and help hunt this stone and I went to Corpus Christi and he went on down there and looked at it. I afterwards went down there and saw the stone. There was in the party Mr. French, Don Fernando, Cassemera, Macedonio Salinas and another man by the name of E. P. Mamio, and I think two or three others. (The witness then testified about the examination of this stone substantially the same as the other witnesses.) I went over to the Alcatraz with a man by the name of Alernio Zamora and he took me to the place where the rock was at that place and I afterwards went there with the others. There were in the party Mr. French, Mr. East, Mr. Hyman, Henry Pagenett, I think was there and my driver. This rock is situated on a little point about southwest of the Alcatraz Motte. To the west of it is a little arroya and I believe it is about 50 or 60 varas from the creek, about the same distance that this little arroya that runs down to the main creek. (The witness then described this rock and its surroundings the same as the other witnesses.) I know where the Tresquilas Lake and Hill are.

211 I have known of the Tresquilas some years, I can't say exactly, probably 15 or 16 years. They have been known by that name. I was there the other day. I have heard Mr. East and the other gentlemen testify about that occasion. I first remember seeing that lake and hill about 15 years ago. It may be a little longer. The country was fenced then. It is a small hill and there is a lake at the foot of it, the hill is on the north side and the lake on the south side. It is a shallow lake. There is another lake to the east of it. Some people call it the Lioncitas and others the Tresquilas, but I have noticed the older people call it the Lioncitas and others call it the Tresquilas. Some of them call it the Lioncitas and the others, they call it the Tresquilas. The old people call the upper lake the Tresquilas. The western boundary of our fence line is indicated drawn from the letter N to O, as shown in the Maddox map. The Tresquilas is about three quarters of a mile to the west of our fence. The Lioncitas is right at our fence. I know the place pointed out by the Mexican witnesses as the site of the old ranch. The first time I saw it was five or six years ago. At that time there was no evidence of a ranch having been there. The only things I have ever been able to find there to indicate that a ranch has ever been there is by pieces of crockery and things lying around there, that is the only evidence there is. There is nothing there in the way of a house, corrals, or pens, or anything else that I could see. There is not now and never has been since I have been familiar with it. I know where the Parker & Hale ranch is and where the present Santa Rosa ranch is. (The witness here pointed out the Parker & Hale ranch and the present Santa Rosa Ranch on the Maddox map.) The Parker & Hale ranch is about a quarter of a mile west, or a little north of west from the present Santa Rosa ranch.

They were pretty close together. The Paistle grant is fenced. They built that fence on the west boundary of it about 21 or 22 years ago. I think it was in the spring of 1883 we commenced fencing that.

That is on the red lines from H to J extending down to K
212 on the Maddox map, and I have that fenced now claiming it to the western line of the Paistle. Have had it fenced 21 years. I have a suit here in which I am suing the State of Texas, in which I am trying to establish a line out from that point. The Trancas Motte is about four miles south from the Pancho Ancho. There was some remains of trees standing there in 1883. The overflow we had in 1883 swept right through the old motte there and carried off a good deal of the old stumps and things left there and in fact, carried away several trees. Our present fence on what I claim to be the western boundary line of the Barrosas was built five or six years ago, it might have been in 1881. Up to that time the line of our pasture fence on the Barrosas was to the west of where it is now located and its southern terminus would be at the point P on the Maddox map. Up to 1901 the land between point P and the point O on the Maddox map was inside D. R. Fant's pasture and in 1891 I went inside of the pasture and built the new fence. There were some rangers there at the time. They did not come down there to protect me in building the fence. They came down there to see that there was no disturbance. The nature of the disturbance was that Captain Word came over there to try to make us stop and the rangers were not brought down there to build that fence, because we started before the rangers got there. I went inside of Col. Fant's pasture and Mr. Word, who is Mr. Fant's brother in law, came down there and tried to stop us and then the rangers came and we went on and built the fence. My regular attorney is J. B. Wells. I can't tell you whether he has any of the state sections located on what is known as the old Abajo grant, and which is inside of our Paistle pasture leased or not. I think he has some of them leased that are inside of our pasture. I do not rent them from him. If he leased these lands he leased them without my knowledge. I don't know that he has section No. 2 leased from the State, I can't say that he has. (Here the witness was shown copy of letter written to the witness by the Commissioner of the General Land Office, and
213 which is embodied in Defendant's Bill of Exception No. 1, and testified that it was a copy of a letter which he received.) That letter says that Judge Wells has section No. 2 leased. They advised me of that fact in that letter, they also advised me in that letter that Judge Wells has section No. 4 leased, also section No. 60, also section 84. I have 240 acres of that section leased myself. It is not a fact that when we built the fence on what we claim to be the west line of the Paistle, that Col. Fant objected to having it built there. I know Wiley Hodges. He did not come down there when we were building that fence and object to our building it and tell us that it was Col. Fant's land. I did not tell Mr. Word so. No objection was ever raised to the building of that fence to me because I wasn't the Manager of that ranch. I was not present

when the fence was built. I did not tell Mr. Word that there was an objection made at the time the fence was built by Mr. Wiley Hodges who was representing Col. Fant at that time. I did not tell Mr. Word in 1885 at the La Parra ranch that Wiley Hodges came down there when the fence was built and objected *yo* its being built. I first saw the rock which I testified to being at the Alcatraz in May. When I sent Mr. French to be with Mr. Maddox on his survey, when he was making the survey under order of the Court I did not tell Mr. French about that rock at the Pancho Ancho, nor did I tell him that it had been found, although before that time I had seen both the rock at the Pancho Ancho and the one at the Alcatraz. There is litigation pending now in regard to the piece of land which I took in when I extended the fence to Barrosas pasture in 1901. There is also litigation pending in regard to the land between the west line of the Paistle as I claim it and between the western line as claimed by the defendants. The land covered by the rail road surveys and the land at the eastern end of the Encinal and the west end of the Barrosas is in litigation. I do not remember the date my father purchased the Parra ranch. I never knew Nicholas Grisante. I have not gotten nor do I know
214 where the original title papers to the Santa Rosa de Abajo are. I have never seen them and have no information in regard to them. I have recently acquired by purchase an interest in the old original Santa Rosa de Abajo grant. I purchased from the heirs of Pedro Villereal. There are in the neighborhood of two hundred and I can't give you the names. The heirs of Pedro Villereal have placed the matter of their claim of the old Santa Rosa de Abajo grant under the grant of the Mexican Government in the hands of G. R. Scott their attorney, and I have purchased the interest of the heirs provided they win out. I am therefore not only interested in this litigation to the extent which I have already explained, but I am also interested to the extent of having a contract for the purchase of the old Mexican Santa Rosa de Abajo grant in the event it is established.

Judge JAMES B. WELLS, a witness for the State testified:—

I have been at the crossing of the Olmos known as the Pancho Ancho several times. In the spring or late in the winter of 1882 I was there, I don't remember, I was there. The occasion of my being there then was, Capt. Kennedy was fencing his pasture and I had been his attorney for a number of years and he had a fence from Laguna over on the other side coming around this way towards the Olmos. He telegraphed me to Brownsville from the La Parra ranch to come out there and bring a good surveyor with me and I got Mr. J. J. Cocke and a carriage and went out there. We crossed at the Pancho Ancho crossing. I didn't know it was the Pancho Ancho then. We went to the place that I have since known as the Pancho Ancho. I don't think I have been there but once or twice. When I was at Pancho Ancho Mr. Cocke was with me. We went there to determine whether it was Pancho Ancho. We made an

examination of the creek banks, of the creek, to determine whether it was the crossing or not. There was a road crossing there. We examined the bank very carefully on both sides of the creek and especially on the south side. I don't remember crossing the creek
myself on the north side. There are several old roads there
215 that have been cut out there. It was a sandy country. Cut
out there and crossed over and we could see where they came into this crossing. We went clear down to where Blucher had put his line between the east line of the Paistle and the west line of the Parra. There wasn't any evidence of a crossing down there at all, not the slightest in the world. We passed over it with equal care because I wanted to determine in my own mind what it was the Pancho Ancho crossing, as I stated I knew nothing about it before. Mr. Cocke had his compass with him. The surveying we did was this, Mr. John Kennedy who is here and who is the son of Capt. Kennedy, and myself carried the chain for Mr. Cocke. I stayed there at the La Parra ranch three, four or five days, I don't remember. Less than a week with Capt. Kennedy in this work, and I helped him carry the chain. Mr. John Kennedy and myself carried the chain from this bend of the creek where all these roads wound in and ran across them out to the Trancas Mott. There was a motte there at that time. You could see it. Mr. Cocke had an old map with him to use as a guide, some old field notes and he put down his compass right where the road went in upon top of the hill on the bank of the creek on the south side and took bearings and I looked through the compass myself and saw the Trancas Motte and we followed that across. I didn't know what crossing it was. I chained it out to the motte. There was a motte, some trees, I don't know whether they are there still or not. We did not locate the west line of the Paistle on that trip. We determined the proper location of the east line. We were to locate the Pancho Ancho and the east line of the Paistle and the west line of the La Parra and when we got this crossing and the Trancas Motte, why I advised Capt. Kennedy where to put his fence. That is what he wanted to know, my advice as his attorney where to put his fence.

Cross-examination:

I knew nothing about where the Trancas Mott was before I went there. I only know that there were some trees on the line which we
chained. There may have been 4 or 5, I can't say after this
216 length of time. Tall old live oak trees. That was in 1883,
late in 1883. It was late in the winter or early in the spring of 1882 or 1883. I don't know which. I think it was 1882. I advised Capt. Kennedy that the Trancas mott was one of the natural objects called for in his grant. I advised him from my investigation and measurements that the point we located was the Pancho Ancho corner. About the Trancas motte, I only know by the trees on that line. That's all I know about it and I told Capt. Kennedy that if this was the Trancas Mott it was the natural object called for in his grant. I think it is called for in the field notes of the west line of the La Parra which is the east line of the Paistle. One grant

calls for the other. I don't know whether these trees have been cut down or not. I don't know anything about that. I have seen the Cobos Motte at a distance. I don't know anything about it. I don't remember of ever being exactly at the Covas Mott. I know it is a well known Motte, known as the Covos. I have heard it spoken of, but its location I don't know, that is touching any land or tract of land. I have leased from the State sections 2, 4, 60 and 84 and I think two others that are located on what was the old Santa Rosa de Abajo grant. I think two are inside of Mr. Kennedy's pasture, or one and a half of one, and two inside of Mr. Fant's pasture. I don't remember the number of sections I leased, I think four sections. I do not use these sections. I do not raise stock on them. I am Mr. Kennedy's attorney and have been for a great many years. Was Captain Kennedy's attorney before his death. I leased these sections without Mr. Kennedy's knowledge or consent. It was accidental that I found out they were subject to lease. I leased them for my own benefit, to be entirely frank with you but of course, being Mr. Kennedy's attorney he had them and I suppose he is using them. I paid part of the rent. I paid the rent out of my pocket and I paid the rent the following year and I think Mr. Kennedy has paid it since then. I paid it one or two years. I don't remember whether I got back the rent I paid or not. It is altogether probable that I did. I know that he paid a part of the rent and the probability is that he has reimbursed me for the rent I paid.

217 I think so. I won't swear whether he did or not.

State rests.

W. B. BARTON, a witness for the defendant testified:—

I am 51 years of age and live in Hidalgo, Hidalgo County, Texas I am Tax Assessor of that County and have held that office for about sever years. I know the Santa Rosa ranch in Hidalgo County. It has been about 40 years that I have known it. I first became familiar with it by going there with my father from Brownsville. My father was in charge of the ranch for Parker & Hale. When my father first went out there I did not go with him until afterwards. I was quite young. After that I went with my father out to the ranch off and on. After he had stopped there on it he would make frequent trips to Brownsville and I would come back with him and afterwards during intervals we were coming there. I stayed at the ranch and lived there for some time and finally my father moved his family to the ranch and we lived there altogether, and when I was old enough to ride a horse I worked stock all over that country and at the break up of the war we came to San Antonio. It was a good while, sometime before we went back to the ranch. We then went back to the ranch and then right out to Brownsville and afterwards my father moved the family again to the ranch and then I was old enough to go out and work and I went to McAllen and Youngs and worked for them quite awhile. I was working stock on the ranch for them and it was a considerable time before I came back to the ranch any more. Afterwards my father moved in from the Santa Rosa ranch but in the mean time while working with

McAdams & Young I used to take runs over to the Santa Rosa ranch
or awhile and then afterwards I was elected County Assessor and in
going over the County in the performance of my duty I went there.
go around myself. I personally take the assessments of every
anch. I suppose I was between 10 and 12 years old when I first
vent out to the ranch with my father. Since I have been tax as-
sessor I have been at the ranch every year except this year.
218 I know where the present Santa Rosa ranch is now located.
The present Santa Rosa sights are as I first knew it. My
father had charge of the ranch under an agreement with Parker &
Hale who were the owners of it. I know the existence and loca-
ion of a lake in that section of the country called the Tresquila.
It is south or a little west of south of the Santa Rosa ranch. There
are two or three or four salt lakes around there, and there were some
small hills in and around the lake, mesquite brush, prickley pear
and spanish dagger and surrounding small timber around it. As
I remember it I believe one of the lakes is a little larger then the
balance. There are a group of lakes, of small lakes and one was
larger than the others. Since I have known this country these lakes
have been called the Tresquila. I never heard of any one being
called Lionidas. I do not know of any lake in that section of the
country being called the Li nidas. The Tresquila lake is about 4
or 4½ miles, a little west of south from the Santa Rosa ranch. The
site of the recent house built on the Santa Rosa Ranch is about, I
should judge a half mile from the old Parker & Hail buildings,
which are still standing there. I know the Montanegro. It is
situated, I believe, directly west of the Santa Rosa ranch. It is
where Mr. Rachel has his stock camp. He has charge of it for
Chitten & Parr. It is a good sized motte. I suppose a square could
be made there 300 yds. square. The trees are very large trees. Old
timber.

F. M. MADDOX, a witness for the Defendant testified:—
The object shown on my map from the line running south from
the point A where the telegraph line crosses are trees,—timber. The
first timber we struck there was small scrub live oak, and then we
got into old live oak, here the stumps were marked and blazed.
Between the points R and Q on my map the distance is 2003½
varas running from the point V west of the south line of the La
Parra. I reached the western end of the Tio Culas at 7251 varas,
and the eastern end of it at 8000 varas. The Tio Culas
219 motte bears from the above point from the south line of the
La Parra directly north 75 varas. To run to the Tio Culas
Motte from the point Q it would require an increase in the distance
of 2003½ varas, that is to say, point Q is 2003½ varas further than
the Tio Culas motte from the point V. In making our survey of
the La Parras, the Motas, the Palmito, and the Barretta, we were
on Mr. J. J. Cocke's line according to his re-survey of these grants,
that is of the Motas, the Palmito and the Barretta in 1879. In
running the south line of the Motas we were exactly on Mr. Cocke's
line, then we ran south by the meander line and came out on point

T on my map. I had his field notes of the re-survey of the Barretta. I ran out to the island at the end of that line to the point that he calls for at the crossing at this point. Then I crossed over there to the island and then to the La Parra island at the point V. He calls for a point there on the Laguna Madre and then calls for it to run across to the Cayo Patreno Island, and then continues his meanders from the meanders across the Cayo, which shows that I could not have been more than four or five varas away from his point. I did not find any marks at that point V on my map but I verified my work with Mr. Cocke's meanders. The Palmito and the Motas as the same were surveyed by Mr. J. J. Cocke in 1879 are correctly shown on my map in black lines. The red lines on my map from the point Q back to the point B on the Olmos through what Mr. Cocke called the Trancas Motte and the red line from the point Q east correctly reflects the line of the La Parra grant as the same was re-surveyed by Mr. J. J. Cocke in 1883 and were verified by use on the ground of all the objects called for by him. If the Motas, the Barreta and the Palmito were constructed so as to correspond with Cocke's re-survey of the La Parra in 1883, the western line of the Motas, Palmito and Barretta would fall upon the red line indicated on my map by the mark letter Q, and the figures (1), (2), and (3) and their eastern end would fall on the red line on my map indicated by the figures (7), (6), (5), and (4). If the Motas, the Barretta and the Palmito are constructed according to
220 Cocke's re-survey of these grants in 1879 the western boundary line of these grants would fall on the line indicated in black on my map running south from the point R and their eastern boundary line would fall on the line indicated in black on my map and marked by the letters T and S. If a line is run south from the point T on my map it will strike the country made up with the Cayos Lagunas badly broken up, a wild country. We did not run line south from the point indicated by the figure (5) on may map, but we went down there and made an observation for about a mile and a half or two miles and you pass a small Cayo near the point 5 and if there are any other Cayo's or Laguna's in there I did not see them. The distance called for in the original grant by Fuentes from the north west corner of the Parra south to the Mesquite Lake is 28840 vrs. The actual distance on the ground from the point A on my map to the Mesquite Lake I found to be 30733.5 varas, making an excess in distance of 2183.5 varas. If the common corner of the Motas, the Paistle and the Parra is located at the point D on my map or at any point within 260 varas west of that distance to the Mesquite Lake would be 32572 varas or 3929 varas over the call in the original grant, that is on a line from the point D there will be an excess in distance to the Mesquite Lake of 3929 varas as against an excess of 2183.5 varas on the line to the point A.

The black line on my map indicating the boundaries of the El Tule grant represent the boundary line of that grant. The yellow lines between the points IXX, I, II, XXII, XXII, indicate the Tule grant as it would exist if constructed on the Purgatory Hill at the north west corner and run a line across the distance called for in

the original grant without any other regard to any other natural objects except the Purgatory hill or for any adjoining surveys. If the Tule grant be constructed in this way it brings the south west corner of the southern end of the grant practically at Montenegro. I should say 150 or 200 varas west of the Montanegro. If the Arriba is constructed as located by the red lines on my map it would bring the western boundary line of the Arriba within
221 about 500 varas west of the Monta Negro. This motte is a very large motte of very large old live oak trees and looks black at a distance. You can see it a long ways. The trees are very old. I suppose the motte must be 100 varas long, north and south and 400 varas in length east and west. It is a very prominent object in that section. I do not know of any other motte in that immediate neighborhood as large and as prominent as that is. If the Tule grant is located as indicated by the yellow lines on my map it would place the western boundary of the Tule about 3000 varas east of the east line of the Loma Blanca. The Tule Lake so marked on my map is the lake called the Tule Lake in the survey by Felix von Blucher in 1859. The Blucher western boundary line of the Arriba as surveyed in 1859 runs south from the letter Z on my map and Blucher called for that line to run across the Charco del Tule, and called for marked trees along that line. We didn't find one of the trees standing. The Blucher line runs from the west end of the Charco del Tule. There is a small lake there and a little further to the east is a larger lake just about as indicated on this map. There is a sand hill that seems to have been blown in and cut the lake in two. It is filled in so if there had been at first one lake, its been filled up so as to be cut in two. They are both in the same general depression. Charco del Tule as called for by Blucher in 1859 would be entirely west of the west line of the Tule if constructed from Purgatory Hill as indicated by the yellow lines on my map.

The Mota del Llano is east of the west line of the Encinal as shown on my map in green. The red line on my map indicating the western boundary line of the Encinal runs right through the motte. The motte is located about 900 varas north and south and about 250 or 300 varas wide, east and west. It is in a prairie. The surrounding country is prairie in all directions. There is no timber to the east of that for 5 or 6 miles, there is no timber to the south of it for about 2 or 2½ miles, and to the west there is no timber at all until you go twelve or thirteen miles, and there is a motte about two or two and a half miles to the north. I should have said to the north west, and about a mile and a half to the north of
222 that you strike another motte. The Mota del Llano is situated right in the prairie and is surrounded for some distance around it in every direction by prairie. When I was running the west line of the Encinal as patented, as I understood it to be at that time and as it afterwards turned out to be, and when I got about a mile and a half or two miles below the Monta del Llano, having in the mean time looked over to the west as much as I could for lakes, I asked Capt. Dix and Mr. French to go down to the west and look for lakes and they went over there, and as I got down to the timber,

a mile and a half or two miles, I got in a buggy and drove out that way about two miles along the swale and I didn't find any lake in there and made inquiry of people living there and they didn't know of any lake. Now I don't say there wasn't lake in there but if it was in there I didn't find it and it certainly wasn't in there. Mr. French was not with me when I ran the line from the point L to the point W on my map, nor while I was meandering the Olmos Creek from the point H up to about a mile, or a mile and a half above the point W. The balance of the time while I was making this entire survey he was with me. He was the representative of Mr. Kennedy. I was so informed by both Mr. Kennedy and himself. Mr. French would take down all the notes and he had perfect access at any time he wished to look at the compass and look through it and see the measurements made, and sometimes he would assist in making measurements and triangulations. I told him any time he wished to look through the instrument I wanted him to feel at liberty to do so. There was no restraint placed upon him at all. He took the notes of our survey and details of our work were discussed and gone over between myself and Mr. French as we progressed. We would discuss them and compare them and compare our notes and would then discuss the matters fully and would discuss what we thought was the proper construction of the surveys in making the line. In regard to the details of the survey, the measurements of what we found on the ground, in running these different lines, if there
223 was any disagreement between Mr. French and myself I never heard of it. In addition to myself and Mr. French Capt. John J. Dix and Mr. Thulemeyer, both surveyors, were with our party.

Point A on my map is the site of the south bank of the Olmos, that is it is called the Olmos. Above that point it is called the Bovido Creek. Point A is on the south bank of that creek. The Pancho Ancho is the crossing of the Olmos near the corner of the Parra and north east corner of the Paistle. I was not on the north side of the creek. I was on the south side. The bank of the creek from Point A to point D back a little from the creek is a considerable sized bank. I reckon thirty or forty feet high all along there, back from the creek and then they slope down to the creek. The fence runs rights down under the high bank. They are sloping banks. You can go down them most anywhere. Some places you can't. We found south of the point A and south of what we called the Mud Flat, and which is shown as such on my map, a number of roads. I think my notes showed 240 to 400 varas perhaps, just a series of old roads. They cross the mud flat just about as shown on my map. They were on this lower crossing or rather where the crossing is shown. I didn't see that these roads went across because I wasn't on that side, but there was one point there where the road went in just as shown on the map. That is the furtherest point down that we saw the road going in the water. That is about half way between point- A and D on this map. The main road going over and going down this place is just about as shown on the map and about 500 varas east of point D. About mid-way between the points A

and D we crossed old roads up to there you could see continuously up to that point beginning between half way between points A and D up the creek and up to within about 500 varas of points D, leading in and all centering in the crossing. Whether they came out on the other side I am unable to say because I wasn't over there. We found a road going into the creek from the south bank all along there for a distance of from five hundred to a thousand varas.
224 The last road we crossed was about 500 varas east from the point D. The mud flat shown on my map is about 350 or 400 varas wide. I went in to it at 30 varas from the creek and came out of it at 360. It is what we call the dry Cayo. There it is the mud flat. We went right across it with our lines but we didn't undertake to carry our horsemen across. They went across further down. We crossed at the mouth, pretty well south from the point A, and then we ran out line across there and it is muddy and in high water of course the water comes in there. When the tide is up a little water is standing in it at low tide, the tide water comes up in it and there is a hole that comes in there, quite a hole, quite a rise in the ground and where we began was right at the point where this promontory ran out between the mud flat and the creek, the point we took to be the point called for by Mr. Cocke and Blucher in there. Around the mud flat is a well defined object on the ground just as it is shown on the map as near as I can make it. There is no other object west of there along the Olmos Creek that corresponds to the mud flat physically speaking. We meandered the Olmos Creek from the point A to the point Z, a distance of about 30 or 40 miles and my map shows the meanders of the creek correctly. The manner in which the connection between the creek and the mud flat is made is shown on my map. It is a branch of the main creek. We measured east from the point A, crossed it and then we measured south from the point A on the line and when we got to a point 531 varas from our beginning point I then ran west and turning west and took the distance across it and it is delineated there on that map just as well as it can be the way it appeared on the ground. It is what is called a short Cayo in that country. There is no Cayo in that country west of that on the Olmos Creek of that nature. Mr. French was with us on this part of the survey and he took notes of it himself and there was no disagreement between us as to the situation on the ground as we found this mud flat.
I have examined the original map of the Santa Rosa de Abajo and remember the off sets as indicated on the map as being
225 made along the Olmos Creek. The first offset is shown on the map to be 60 cordels or 3000 varas. This 60 cordel line however, shows on the map not to reach the bank of the Olmos Creek but to terminate at a dotted line and scaling the distance between the dotted line and the creek I should estimate that it was between 800 or a thousand varas which would make the entire distance from the bank of the creek to the end of the off set line between 3800 and 4000 varas. If the east line of the Abajo and the west line of the Paistle is located at the point H on my map it will only be necessary to make an off set of about 160 varas in order to

run a line directly west and find the point of the creek. If you make the off set from the point H south 3800 varas and then run west 139 cordels that line would terminate 1600 varas south of the Olmos Creek and another off set is then made which is 10 more cordels to the south and a line is run thence west 32 cordels and 16 2/3 varas, both being the off sets indicated on the map of the original grant. This line would terminate 2900 varas south of the Olmos Creek. The first off set I find on examination of the original grant is 44 instead of 60 cordels from the dotted line and making the off set to correspond it would bring the termination of the line running to the west in these off sets 800 varas nearer the Creek. That is to say if a line is run west from the first off set they terminate about 800 varas from the Creek and the line run west from the second off set would terminate about 2100 varas from the creek. If these off sets are made from the point F and the lines run west from the end of the off set the lines would terminate approximately on the bank of Olmos Creek.

If the north west corner of the Paistle and the north east corner of the Abajo is located at the point H, the big bend of the creek to the north would be entirely within the Paistle grant and not in the Abajo.

The storage house at the Santa Rosa ranch which is said to be the site of the old Parker & Hail ranch is west of the Blucher line about 300 varas and the present ranch house is about 250 varas
226 east of the Blucher line, making in all about 500 varas between the two.

In the location of the Encinal grant I find upon examination of the original title papers that the south west corner of the Barrosas is called San Andres' corner and the south east corner of the Santa Rosa is called the San Francisco. The San Antonio del Encinal calls for its south east corner the San Andres corner. The Finados calls for the Jarita corner which has been placed at what is known as Jarita Lake, and where we found it on the ground. I began at the south west corner of the Barrosas as now located on the ground and ran west through the Jarita. My reason for doing that was that the Estavan Martines shows to run east of the Mota del Llano and I found in the re-survey of the Martines, the Mota del Llano is called for and by beginning the Encinal at the south west corner of the Barrosas at the San Andres corner, and then running thence west from the Jarita Lake and running the distance called for in the Encinal grant, and then running north you pass immediately east of the Mota del Llano and as so constructed the lines of the Encinal are indicated on my map in red. The patent lines are indicated in green.

I found no natural or artificial object on the ground making or fixing the eastern boundary line of surveys 155 and 156 in the name of the Texas Mexican railroad. I put that hook in between the eastern line of surveys 155 and 156 to connect with the line running directly south from the eastern line of the Tule, obtained because Mr. Blucher in his field notes of the Tule called for the true west line of the Arriba and Salinas, the official surveyor who made

sections 155 and 156 called for the eastern boundary line for the true west line of the Arriba. Salinas also made a resurvey upon the Encinal upon which the patent was issued and called in survey 156 for the corner of the Encinal and sections 155 and 156 have no marked corners or objects on the ground to fix their lines but
227 call for the Encinal on the south and the Arriba on the east. I want to say this map shows sections 155 and 156, 153 and 154 and all the surveys in here platted by course and distance from the south east corner of the survey No. 32 at the point X X on my map. I had found this map as shown on the ground of surveys *of surveys* 347 and 348 and I ran a line through there and I found the western boundary line of 152 and 151 corresponded with the eastern boundary line of surveys 348 and 347 as found on the ground, therefore I took it for granted that this was the proper construction to give these surveys. I made the map of course and distance and hooked them to the west line of the Arriba as shown on my map.

Cross-examination by ATTORNEY GENERAL:

If the Paistle is correctly located as shown by the point D on my map as its north east corner and if the Abajo and the Paistle have a common boundary line there could be no conflict between them but there would be a conflict in that case in the Paistle and the Abajo as surveyed by Mr. Cocke in 1879. Beginning at the point A and running south we made search for groves of trees and every natural object we saw we took note of. We did not find at a point 50 cordels or 2500 varas south of the point A any stump or other evidence of trees to correspond with the Trancas Mott and on a line run south from Point D we made similar search and we did find at the point indicated by a cedar post some stumps. I think it was four live oak stumps. These stumps were 7205 varas south from the point D. At a distance of 150 cordels or 7500 varas south from the point D being the call for the distance in the original La Parra grant for the Paistle timber. We did not find any stumps or anything of that kind although we made search for it. At the point A the creek is known as the Bovido and from that point up as far as the Mesquite crossing, from there up it is known as the Olmos Creek, from Mesquite up and from the crossing down it is known as Laguna de los Olmos and from there down it is known as the Bovido Creek and Baffins Bay from there down.

The Cobas Mott which was pointed out to me by Captain Dix, some 200 varas west of a line drawn from the point A is a
228 small mott, a few trees in a sand hill. The line drawn south from the point A passes right through the point of the La Parra timber which extends probably 150 varas west of the line running south from point A. It does not extend over to the line drawn south from the point B. The distance called for in the original grant of the Parra from the Olmos Creek to the Parra timber is 2500 varas. The distance on the ground is 3711 varas from the point A. By a comparison of the ten cordel line shown in the off set of the Abajo grant with the distance between the approach of

the Creek and the end of the 44 cordel line, I should judge by that standard of comparison and estimate that it was about 500 varas from the end of the 44 cordel line to the bank of the creek. The difference in the length of the east and west lines of the Abajo as contained in the original grant is about 2200 varas. If you take the point indicated on my map by the red line as the east line of the Arriba and the west line of the Abajo and make the off set to the south far enough to miss the point of the creek lying to the east of the red line and at the end of that off set run a line 1616 2/3 varas, and then run the line north 500 varas you would come within about 200 varas of the creek. If you run a line due east from there 6950 varas without making any allowance for excess and then draw a line from there north 2200 varas you would reach a point about 200 varas north of Olmos Creek, and if you add this the estimated distance between the 44 cordel line and the creek you would be between five hundred and a thousand varas north of Olmos Creek, and if you then go back to the end of the 6950 vara line and continue this line east to the line running south from the point F, which is the Blucher line, the distance from where you would strike that line to the Creek would be a thousand varas further from the creek than we were at the termination of the 6950 vara line. The distance between the Purgatory Hill and the south east corner of the Paisano is 1057 varas. The Texas Mexican Survey 156 calls for the corner of the Encinal as patented and the green line shows the Encinal as patented. If the Santa Rosa de Arriba is lo-
229 cated as claimed by the State and the Encinal grant is commenced at the south east corner of the Arriba as thus located and is constructed by running west the distance called for in the original grant of the Encinal, it would throw the western boundary line of the Encinal about 2000 varas further west than the green lines indicate on my map as the patent line.

Redirect:

By establishing the east line of the Encinal at the point indicated by the State's contention as to the true location of the Arriba would run the south line of the Encinal through the Jarita Lake, but the distance would be short and it would throw the west line of the Encinal 2000 varas west of the Mota de Llano. (The witness was here shown a map of the original grants constructed according to their calls as to their course and distance which was introduced in evidence by the Defendant and marked map Z and stated) this map was prepared under my direction. The map is made from the original field notes and the original grant papers and the natural objects shown there in red is as called for in the original papers and as shown in purple are as found on the ground by course and distance from the point A on my map. The grants as delineated on that map are constructed according to the calls for each other and a distance taken from the original grant.

Recross by ATTORNEY GENERAL:

The construction beginning at a point A as shown on my map is the actual location of the Loma Blanca as shown on the ground by its natural objects and corners and is some 1500 varas to the west of where it would be located if course and distance was taken from the point A. If the Lake called for in the Loma Blanca is the controlling call, it would move that survey to the west as represented by the pink spot on the map and it would pull the Tule over to the Tule Lake as shown on the map. On this map I have rep-
230 resented the Encinal survey as cornering on the south west corner of the Santa Rosa grant and I have represented that line as running in the direction and distance called for to the south west corner of the Santa Rosa grant 10000 varas and thence north a certain distance and then continuing west a distance of 12500 varas, if the original survey be as claimed by the Plaintiff in this case, some 200 varas or such a matter further west than as represented on your large map and it had been extended the distance called for in the original grant 12500 varas, that would locate the western boundary line of the Santa Rosa de Arriba about where it is shown by the State and shown by this map. Whatever may have been the location of the east line of the Tule survey by Canales there is no question that the patent lines of this grant are fixed on the ground as shown in black on my map, the monument on the ground as represented on my map at the point Y and from there south to XXIII.

Redirect:

If the Loma Blanca is located according to its calls for its natural objects, the Loma Blanca Lake, and the Tule is located according to its calls the Loma Blanca and the Paistle and the west line of the Arriba, which is made by the same Surveyor, is fixed at the point where the east line of the Tule would thus be located from the Tule Lake it would fix the west line of the Arriba at the patent line of the Tule. If the grants are located by the calls for course and distance in the original grant they would show in the form indicated on the map Z and all the territory west of the west line of the Arriba would be appropriated by the Encinal, and the Tule and the Loma Blanca except that part which lies between the south line of the Tule and the north line of the Encinal, and if the north east corner of the Paistle and the north west corner of the Arriba is located at the Point D and the line is run south from there, or from any point between two and three hundred varas west of there it would not strike the Parra timber at all.

231 Recross by ATTORNEY GENERAL:

If the Loma Blanca should be constructed by obeying its calls for the natural objects from which it has given course and distance from the line of the Loma Blanca as thus constructed they would lack reaching the west line of the Santa Rosa de Arriba as constructed by course and distance from the east by about 2200 varas.

Redirect:

Thus there would be a vacancy between the Tule and the Arriba of about 2000 varas.

JOHN A. DIX, a witness for the defendant, testified as follows:—

I live in Duvall County, my business is surveyor and farmer. I have been the official County Surveyor of Duvall County off and on since 1876. I knew Felix von Blucher well, knew him since 1848. He was the surveyor of that district, the land district of Nueces County, in which was included Duvall County at that time and a part of Live Oak. I was a deputy under him first then Duvall County was created an independent land district. Felix von Blucher was also deputy surveyor under the district surveyor of Cameron County, in which the territory involved in this litigation is situated. Mr. Field was the official surveyor, at one time of Cameron County. (The witness was shown a map that was introduced in evidence by the defendant and referred to as map F and testified.) I recognise that map. Maj. Blucher gave it to me at the time I *was* had worked with him, or had started to work for myself. It is dated in 1869. I commenced to work for him in 1867 and continued to work for him and in connection with him until 1876. He gave me this map during that time together with many other papers pertaining to the land district there. I have been in Texas 71 years next February. I was in this territory which is involved in this litigation in the first week of April or last of March in 1846. I went through this country immediately after
232 General Taylor's army had left Corpus Christi and followed the trail of his army down to Point Isabell. I went right by the present site of the Santa Rosa Ranch, we camped there two or three nights out from Corpus Christi. It was known in those days as Santa Rosa. There was no ranch there then that I know of, or that we saw, the place was called the Santa Rosa Mott. There were some motts around the lakes,—hills near where the ranch at present stands. I was with Mr. Maddox during the greater part of the time that he was making the survey under the order of the Court. I know the Charco del Tule, have known it since 1853, and where I have known it, it is located at the point indicated on Maddox's map. I know where the Cobos mott is. It was pointed out to me many years ago. It is immediately west of the Parra timber. The timber immediately leaving Cobos Mott is the Parra timber. The upper or northwest end of the Parra timber commences East of the Cobos Mott and the Parra Timber runs off from there in a south easterly direction for a considerable distance without any brakes in it. It runs to the East and South East. It is a considerable mott of large timber and has in it a considerable amount of grape vines, which gives it the name of Parra. Parra means grape vines. There are a great many of them in this Parra Timber. I have never known the Trancas motte until we found the remains of the motte on the Cocke west line of the Parra. We found a post lying on the ground, on the rise where there were some old stumps. A small portion of the Cobos motte is still there. Only a few trees left. I do not recol-

lect how many stumps we found near the post on the Cocke line, some four or five, not more than five, I think. We found one stump that was fifty yards from where the post or stake was lying. It had been cut up and was entirely out of the ground except, perhaps a root buried in the ground. It had fallen and was in a lower place than where the stake was put, but immediately in that neighborhood we found four or five stumps. I have crossed the Olmos at what is known as the Paso Ancho. I was on the ground with Mr. Maddox when he made the survey at that point. I have known that crossing since 1848, first week in December. I crossed at that crossing
233 then. At that time there was no road through that country at all, it was simply a lot of trails. I do not know that there had ever been a wagon over there at that time, perhaps a cart or so. I have crossed at that crossing several times. I was there in 1860. I was there again in 1890. I have been there several different times. Paso Ancho means wide crossing. Paso is crossing. Ancho is wide. It was not a marked crossing. That is it was not very plainly marked except by the horsemen, when I first crossed it in 1848. It appeared to be a crossing used by horsemen going north and south, and was on the road that came in from the Bovido, and crossed at that place and went on down by the Cobos Motte towards Matamoras. I first crossed it in the winter. I do not remember whether the tide was high or not. But in some places the water was belly deep to our horses. The tide ebbs and flows there. The crossing is four or five hundred yards wide up and down the creek. They went across wherever a person could cross best. Whether the crossing itself was called Paso Ancho from the fact that it could be crossed at any place within four or five hundred yards up and down the creek I do not know. I have heard Mr. Maddox testify about the mud flat delineated on his map at point A. I was there when he made that survey. I was with him when he meandered the creek from the west. It is correctly delineated on Mr. Maddox's map as we found it on the ground. I have no recollection of that mud flat when I was first there, because at a short distance above the trial turns more to the right then where the mouth of the mud flat is and we might have gone over the hill, straight towards the Cobos Motte, which the trail probably did. There is no other place west of the point A. that I ever saw where a cayo makes into the main creek as does the one at point A. I was with the surveying party when the creek was meandered to the West from point A. I do not know of any sand bars such as would correspond with the fork of the creek which is shown on a photographic map of the Parra. There may be some slight sand bars because there were several gullies that come
234 into the creek short gullies, some of them not more than twenty or thirty yards or varas long, where the sand from the hill is driven into the creek by the force of the running waters. I also thought that I would look for something of that kind or any monument below this point, and Mr. Putegnat and myself rode down something like ¾ of a mile or more and we found nothing. This mud flat shown on Maddox's map, point A. is probably seven or eight hundred varas long and is from three to three hundred and

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fifty varas wide. There was very little water in it the day we were there. The banks of this mud flat or cayo where it enters into the creek are on one side 15 or may be 20 feet high, that is on the East side, on the west side it is some distance back to where it would be 12 to 15 feet high and continues high for some distance. I think that the tide water would go into the mud flat in high tide. I know the Mota Negro. I have known it about eight or ten years. It is a large motte and large trees, and close enough to show sark for a considerable distance. That is how it gets its name Mota Negro. I went with Mr. French west of the patent line of the Encinal and the east patent line of the Ayala to look for a lake. We did not find any. I suppose we went ¾ of a mile, rode around considerable distance. I know the Mota del Llano it is situated in the place indicated on Mr. Maddox's map I have known that motte since 1882 and 1883. I do not know that I ever heard it called anything else but the Mota del Llano and afterwards the Serillo motte. When I camped at the Santa Rosa in 1848 a large lake which was situated just north of the present ranch site was filled with drinkable water both for stock and campers, this lake when I first saw it had considerable tule or bull ruches growing in it. I have known this lake ever since and have seen it many times since 1848, and it has always had water in it which both stock and man could drink, only when the water got low in this lake would it become bra-kish, there was no other lake or pond in that immediate neighborhood which had any drinkable water in it capable of being used either by man or
235 beast. That lake which I have known since 1883 as El Tule Lake had considerable water in it then and ever since I have known it.

N. L. WORD, a witness for the defendant testified:—

I live in Hidalgo County, I am related to the defendant, D. R. Fant, by marriage, I am his brother-in-law. I have known the Santa Rosa Ranch since 1883. In that year I went through there in January, stopped there at the ranch three or four days, and went down into Mexico. I was there about two weeks at that time gathering horses. I know where the present site of the Santa Rosa Ranch is. It is at the same place it has always been since I have been acquainted with it. I have been acquainted with the Tresquila lake since 1883, I watered in it in 1883 when I came in there with those horses. I was in charge of the Santa Rosa Ranch for eight years. You might say since 1884, I have been constantly in the employe of the ranch, and was on the ranch buying cattle, backwards and forwards before I took charge of the ranch. I have never heard of the Leoncitas Lake. The Tresquila Lkae is a little west of south from the Santa Rosa Ranch, I s-ould say about four miles between four and five miles. The Tresquila Lake is I suppose about 75 yards across it, and when it is full of water it is fully a fourth of a mile long. There is another lake in that immediate neighborhood. There is a brushy hill right north of the Tresquila, that is on the bank, and right on the south bank there is another hill, brushy hill, and right beyond that is another lake, that is a flat. The water in that

was salty. The water in the Tresquila Lake is good. When it got low it was a little salty. The stock always drank it, good stock water. When it was full it was fresh. That was the largest lake in that country. That was known as the Tresquila and I have never known of any other name for it. Wiley Hodges was in charge of D. R. Fant's ranch in 1883. He is dead. I had a conversation with him in regard to the circumstances under which the Kenedy
236 fence on the east side of the Abajo was constructed. I was there in 1883 when the fence was built. Wiley Hodges told me that he had objected to Mr. Kenedy putting the fence there. Said that he rode out while the men were building the fence and forbid them putting it there, claiming that it was Col. Fant's land. I also had a conversation with Mr. John Kenedy on the subject, that was at his ranch in 1885. He told me that Wiley Hodges came out in a bragging way, had his pistol on and forbid his men to put the fence up, and they just went right ahead and put the fence up and did not pay any attention to him. I do not know how long the Santa Rosa Ranch has been fenced. It was fenced in 1883 when I first saw it. The fence then is not just where it is now, it was a smaller pasture. It then, when I first saw it, went up west to the Monterey Ranch which is about one half of a mile west of the Mota Negro. I do not remember the exact year that the present fence was built although I was there. It has been a number of years, it was in the eighties, early in the eighties. Col. Fant originally bought from Parker the Santa Rosa de Arriba and the section covering the old Santa Rosa de Abajo, and he subsequently bought the Tule from other owners. I knew where the west pasture fence of the Encinal pasture is. I have ridden all over the country and west of that fence a number of times. I know where the Cerito mott is. I do not know of any lake to the west of the Cerito motte. The nearest lake to it is to the north west, it is where a man named Nicholas Garza lived. It could not be much over a mile. I do not know of any big lakes to the southwest of the Cerito water. I know the Estevan Martinas grant, that is what we call the Los Norias pasture. There are some small lakes in that grant west of the Encinal pasture fence. There are no lakes that ever hold water for any length of time, no permanent lakes. I know there is none there because I have been all over it.

237 Cross-examination:

There are several lakes in there, there is one that is down next to the Encinal, the southern part of it, the southern part of the Padriosa pasture. There is a flat there, some depression where it holds water for a short time after a rain. It is a good big flat. I do not think that there is any lakes in that pasture that are filled up since I have known it in 1883. Of course the lakes do fill up in that country. I know that this Tresquila lake is not as deep as it was a few years ago, as it was in 1883.

We, the attorneys for the parties to the above entitled cause,

hereby agree that the foregoing is a true and correct statement of the facts proven on the trial of the above entitled cause.

December 30" 1904.

C. K. BELL,
Attorney General, Attorney for Plaintiff.
J. C. SULLIVAN,
OGDEN & BROOKS,
Attorneys for Defendant.

I, V. L. Brooks, Judge of the 26th Judicial District, hereby certify that the above and foregoing is a true and correct statement of the facts proven on the trial of the above entitled cause, and the same is hereby approved.

Austin, Tex. Dec. 30, 1904.

V. L. BROOKS,
Judge Presiding.

(Endorsed:) 18899. The State of Texas *vs.* D. R. Fant. Statement of Facts. Filed Dec. 30, 1904, Jas. P. Hart, Clerk.

238 *Appeal Bond.*

Filed January 6, 1905.

No. 18899.

THE STATE OF TEXAS
vs.
D. R. FANT and D. SULLIVAN.

Whereas, in the above styled and numbered cause, pending in the District Court of Travis County, and at a regular term of said court, to-wit, on the 7th day of December, 1904, the said State of Texas recovered a judgment against the said D. R. Fant and D. Sullivan, which is as follows, to-wit:

18899.

THE STATE OF TEXAS
vs.
D. R. FANT and D. SULLIVAN.

On the 14th day of November, 1904, this cause came on for trial, and the defendants presented a general demurrer to the plaintiff's petition, which having been considered by the Court, was overruled, to which ruling the defendants then and there excepted.

Thereupon the cause came on for trial upon the merits, and both parties announcing ready for trial, and a jury having been waived, the matters in controversy, as well of fact as of law, were submitted to the Court, and the Court having heard the pleadings read, and

having heard the evidence and argument of counsel, is of the opinion that the plaintiff is entitled to recover, and now on this the 7th day of December, 1904, proceeds to render judgment.

It is therefore ordered, adjudged and decreed by the Court that the plaintiff, the State of Texas, do have and recover of and from the defendants, D. R. Fant and D. Sullivan, the title to and possession of the following described tracts of land situated
239 in Hidalgo County, Texas:

First Tract.—Beginning at the N. E. corner of the San Antonio del Encinal Grant made to Jose Antonio Leal de Leon as patented, it being the entrecant corner of the Las Barrosas grant, as patented, and the S. E. corner of the Santa Rosa de Arriba grant, as surveyed by F. A. Blucher in 1859, thence S. 89° 48′ W. 2704.2 varas with the north line of the San Antonio del Encinal grant as patented, to a point, thence North 8653.4 varas to a corner which is due west from the northwest corner of survey No. 72 in the name of the G. C. and S. F. Ry. Co., thence east 2686.5 varas more or less, to the northwest corner of survey No. 72, G. C. & S. F. Ry. Co. thence south with the west boundary lines of surveys Nos. 72, 71, 70 and 69, G. C. & S. F. Ry. Co., and the western boundary line of the Las Barrosas grant, as patented, 8644 varas to the place of beginning, containing 4131.66 acres, more or less.

Second Tract.—Beginning at a post and mound of stone on the right margin of the Olmos Creek, being the N. W. corner of survey No. 81, G. C. & S. F. R. R. Co., thence S. 00° 12′ E. with the W. line of surveys 81, 80, 77, 76 and 73 G. C. & S. F. R. R. Co. 8074 varas to the most northern S. W. corner of survey No. 73, thence west 2682.2 varas to a corner, thence north 8071.6 varas to a stake on the south bank of the Olmos Creek, thence down the said Creek with its meanders as follows: N. 68° 30′ E. 162 varas, thence N. 88° E. 100 varas, thence S. 2° E. 121 varas, thence S. 79° 30′ E. 70 varas, thence S. 1° E. 160 varas, thence S. 25° E. 220 varas, thence S. 54° 30′ E. 330 varas, thence N. 54° E. 720 varas, thence N. 25° E. 330 varas, thence N. 54° 30′ E. 100 varas, thence N. 78° 50′ E. 350 varas thence S. 86° 55′ E. 330 varas, thence N. 70° 5′ E. 170 varas, thence S. 6° 55′ E. 275 varas, thence N. 89° 20′ E. 300 varas to the place of beginning, containing 3813 acres of land, more or less.

Third tract.—Beginning at a stake on the south bank of the Olmos Creek at a point 80 varas south of the most eastern S. E. corner of the Antonio Garcia grant, called "El Tule," as
240 made by F. A. Blucher in 1859, and as patented, (said corner of the "El Tulle" being an old mesquite post from which an old mesquite tree marked ≡ on the north side bears S. 4° 15′ E. 43 varas, and the Salto Hill bears N. 70 E. about 2200 varas, thence up the Olmos Creek with its meanders as follows: N. 70° W. 110 varas, N. 41° 30′ W. 220 varas, N. 79° 30′ W. 250 varas, S. 67° 45′ W. 304.6 varas, N. 79° 15′ W. 346 varas, S. 51° W. 274 varas, N. 80° 15′ W. 140 varas, S. 87° 42′ W. 18.3 varas, to the entrecant or L corner, on the south bank of the Olmos Creek, of

the "El Tule," as surveyed by Blucher and as patented, thence S. 00° 48′ E. with the east line of the "El Tule" as patented, at 6890 varas to the S. E. corner of said "El Tule" survey, thence S. 89° 10′ W. 660.2 varas to the eastern boundary line of survey No. 155, Texas Mexican Railway Co., thence S. 00° 48′ E. 3726.7 varas with the eastern boundary line of surveys 155 and 156 Texas Mexican Railway Co. to the southeast corner of said survey 156, thence west 1436.7 varas to the most northeast corner of then San Antonio del Encinal grant, thence S. 00° 18′ E. 3362.7 varas to the entrecant corner of the San Antonio del Encinal grant, as patented, thence N. 89° 48′ E. with the north boundary line of the San Antonio del Encinal grant, as patented, 3416.9 varas to a point 13,966 varas due south from the place of beginning, thence north 13,966 varas to the place of beginning.

It is further ordered, adjudged and decreed by the court that a writ of possession issue to the Sheriff of Hidalgo County, commanding him to place the plaintiff in possession of the above described premises,

It further appearing to the Court that the defendant D. R. Fant had given to the defendant D. Sullivan, prior to the institution of the suit in this case, a deed of trust conveying all of the above described lands for the purpose of securing the said D. Sullivan in the payment of a debt, and that since the institution of said suit, to-wit:—on the 6th day of May, 1904, the said D. Sullivan
241 had foreclosed the said deed of trust and had the property therein described sold, and had bought in same and become the owner of any interest the said D. R. Fant had in and to the same, and that the said D. Sullivan had assumed the possession of said property on the said 6th day of May, 1904, and that the said D. Sullivan had made himself a party defendant in this cause, and that the rental value of said premises was, without reference to the improvements placed thereon by the defendants, or either of them, of the value of three cents per acre per annum,

It is therefore ordered, adjudged and decreed by the Court that the plaintiff do have and recover of and from the said D. Sullivan the sum of $196.00, the rental value of said premises since the said Sullivan acquired possession of the same, for which execution may issue,

It is further ordered by the Court that the plaintiff take nothing by its suit as against either of the defendants for any part of the following described portion of the land sued for by the plaintiff, to wit—

Beginning at a stake on the South bank of the Olmos Creek said stake being the northeast corner of Tract No. 3 hereinbefore adjudged to the plaintiff, State of Texas, said stake being 80 varas south of an old mesquite post placed by F. A. Blucher for the southeast corner of the Antonio Garcia grant, called "El Tule," from which said old post an old mesquite tree marked ≡ on north side bears S. 4° 15′ E. 43 varas, and the Salto Hill bears N. 70° E. about 2200 varas, thence south with the east line of said Tract No. 3, 13966 varas to a stake (its southeast corner) on the south line

of the Pedro de la Garza grant, called "Santa Rosa de Arriba" as surveyed by F. A. Blucher in 1859, said stake being on the north line of the Jose Antonio Leal de Leon grant, called " San Antonio del Encinal" as patented, thence N. 89° 48′ E. with said line 11088.9 varas to the southwest corner of a tract of 4131.66 acres hereinbefore adjudged to the plaintiff, State of Texas, said corner being
242 2704.2 varas S. 89° 12′ W. from the S. E. corner of said "Santa Rosa de Arriba" grant, as surveyed by Blucher in 1859, and the entrecant corner of the Las Barrosas grant, and the northeast corner of the San Antonio del Encinal grant, as patented, thence North with the west line of said Tract of 4131.66 acres 8653.4 varas to the N. W. corner of said tract, thence east with the north line of said tract at 2686.5 varas, more or less, pass its N. E. corner, at 3896.5 varas a stake, the S. W. corner of survey No. 73 G. C. & S. F. Ry Co., thence N. 00° 12′ W. 1234.5 varas to the entrecant corner of survey No. 73, G. C. & S. F. Ry. Co., thence west 1210 varas pass the most northern southwest corner of said survey No. 73, and the southeast corner of Tract No. 2, hereinbefore adjudged to the plaintiff, at 3892 varas the S. W. corner of said 3813 acre tract hereinbefore adjudged to the plaintiff, thence north with the west line of said tract 8072.6 varas to a stake on the south bank of the Olmos Creek, same being the N. W. corner of said 3813 acre tract, thence up the Olmos creek with its meanders, as follows, viz.—S. 66° 30′ W. 152 varas, S. 77° 30′ W. 143 varas; S. 56° W. 80 varas, S. 13° W. 69 varas, S. 97° 45′ W. 45 varas, N. 34° 45′ W. 200 varas, N. 3° 45′ W. 235 varas, N. 45° 45′ W. 160 varas, S. 73° 30′ W. 145 varas, S. 37° 15′ W. 430 varas, S. 47° 15′ W. 250 varas, N. 89° 30′ W. 60 varas, N. 53° 45′ W. 540 varas, N. 85° 45′ W. 270 varas, S. 82° W. 180 varas, S. 37° 30′ W. 250 varas, S. 54° W. 160 varas, S. 28° W. 150 varas, S. 79° W. 149 varas, N. 77° W. 358.5 varas, N. 25° 15′ W. 180 varas, N. 12° 30′ E. 193 varas, N. 21° W. 243 varas, N. 70° W. 101 varas, N. 28° 15′ W. 80 varas, S. 77° 30′ W. 71 varas, S. 29° 15′ W. 150 varas, S. 51° W. 171 varas, S. 8° 45′ W. 250 varas, S. 12° 30′ W. 297 varas, N. 80° 30′ W. 99 varas, N. 51° 30′ W. 112 varas, S. 87° 30′ W. 617 varas, N. 64° W. 320 varas, S. 68° 30′ W. 230 varas, S. 35° 15′ W. 86 varas, S. 13° 15′ E. 220 varas, S. 45° W. 100 varas, S. 74° W. 330 varas, N. 73° 45′ W. 320 varas, N. 86° 45′ W. 160 varas, S. 84° 45′ W. 150 varas, S. 89° 45′ W. 340 varas, S. 67° 45′ W. 270 varas, S. 87° 15′ W. 430 varas, N. 45° 15′ W. 240 varas, S. 58° 45′ W. 100 varas, S. 10° W. 175 varas, S. 3° E. 150 varas, S. 19° W. 165 varas, S. 3° E. 287 varas, S. 39° 15′ W. 240 varas,
243 S. 20° 45′ W. 230 varas, S. 52° 15′ W. 110 varas, S. 88° W. 155 varas, S. 22° W. 105 varas, S. 42° 30′ E. 160 varas, S. 83° E. 125 varas, S. 15° 30′ E. 183 varas, S. 13° 30′ W. 180 varas, S. 54° 45′ W. 150 varas, N. 64° 15′ W. 180 varas, S. 85° 45′ W. 62 varas, S. 53° 15′ W. 77 varas, S. 28° 15′ W. 290 varas, S. 46° E. 200 varas, S. 22° 15′ E. 210 varas, S. 35° 15′ W. 270 varas, N. 74° 30′ W. 130 varas, N. 31° 45′ W. 310 varas, N. 76° 15′ W. 82 varas, N. 87° 15′ W. 100 varas, S. 24° W. 130 varas, S. 6° W. 190 varas, S. 61° 45′ W. 206 varas N. 66° 30′ W. 195 varas, N.

74° 45′ W. 230 varas, S. 14° 15′ W. 320 varas, S. 82° 15′ W. 180 varas, S. 61° 30′ W. 178 varas, N. 53° 30′ W. 250 varas, S. 76° 30′ W. 438 varas, N. 86° 45′ W. 329 varas, N. 54° 45′ W. 360 varas, S. 38° W. 460 varas, N. 70° W. 90.5 varas to the place of beginning.

It is further ordered, adjudged and decreed by the Court that the plaintiff, the State of Texas, take nothing by its suit as against either of the defendants as to any land described in said petition, lying west of the western boundary line of tract No. 3 hereinbefore described.

It is further ordered, adjudged and decreed by the Court that the plaintiff have and recover of and from the defendants all costs in this behalf expended, for all which let execution issue.

A motion theretofore filed by said D. R. Fant and D. Sullivan praying for a new trial was overruled, to which action of the Court the said D. R. Fant and D. Sullivan then and — excepted and gave notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District at Austin, Texas, from which judgment the said D. R. Fant and D. Sullivan have taken an appeal to the Court of Civil Appeals for the Third Supreme Judicial District at Austin, in the County of Travis, State of Texas.

Now therefore, we D. Sullivan, as principal and Daniel J. Sullivan and Walter Sullivan, as Sureties acknowledge ourselves bound to pay the State of Texas and the said D. R. Fant, the sum of
244 One Thousand ($1,000.00) Dollars, conditioned that the said D. Sullivan, appellant, shall prosecute his appeal with effect, and shall pay all the costs which have accrued in the Court below and which may accrue in the Court of Civil Appeals and the Supreme Court.

Witness our hands this the 6th day of January, A. D. 1905.

D. SULLIVAN, *Principal.*
DANIEL J. SULLIVAN,
WALTER SULLIVAN,
Sureties.

Approved, January 6, 1905,
JAS. P. HART, *Clerk.*

(Endorsed:) No. 18899. The State of Texas *vs.* D. R. Fant & D. Sullivan. District Court Travis County, Texas. Appeal Bond. Filed January 6, 1905, Jas. P. Hart, Clerk.

Bill of Exceptions.

Filed December 30, 1904.

In the District Court of Travis County, Texas.

No. —.

STATE OF TEXAS
vs.
D. R. FANT ET AL.

Be it remembered that upon the trial of the above entitled and numbered cause, the defendants offered in evidence a certain letter from the Commissioner, of the General Land Office to J. G. Kenedy, dated April 13th, 1904, which said letter reads as follows:

Wells. 2-4-60-80-82 & ½ 84.
Kenedy ½ 84.

APRIL 13TH, '04.

Mr. J. G. Kenedy, Corpus Christi, Texas.

DEAR SIR: At request of Mr. C. C. Pierce, of Laredo,
245 Texas, we are sending to your address by this mail under separate cover a tracing and two blue prints of the surveys in the N. W. cor. of Cameron Co. covering the Santa Rosa Abajo grants, and furnish below a statement giving the status of each section, to whom patented, sold or leased.

Sections Nos. 1-2, certificate No. 639, C. C. S. D. & R. G. N. G. Ry. Co. No. 1 patented to F. J. Parker, assignee, Oct. 11th 1888, No. 2 sold to R. J. Collins June 15th, 1896, as additional land, forfeited Aug. 3rd, 1900, for non-payment of interest, reinstated Aug. 18th, 1900, but cancelled for abandonment and non-occupancy of home tract Feb. 16th, 1901. Leased to Jas. B. Wells of Brownsville for ten years from Feb. 15th, 1901. (San Patricio S. 2029 lease No. 32457, file No. 39724.)

Section- Nos. 3-4, certificate No. 640 C. C. S. D. & R. G. N. G. R'y. No. 3 patented to F. J. Parker, assignee, Oct. 11th, 1888, No. 4 leased to Jas. B. Wells for a term of five years from Feb. 8th, 1901. (San Pat. S. 2032 L No. 32423.)

Sections Nos. 51-52, certificate No. 368, C. & N. R'y. No. 61, patented to F. J. Parker, assignee, Oct. 12th, 1888, No. 52 sold to Dayton Moses March 16th, 1900 and in good standing. (San Pat. S-2376, 60327.)

Sections Nos. 53-54, certificate No. 369, C. & M. R'y. No. 53 patented to F. J Parker, assignee, Oct. 12th, 1888, No. 54 sold to G. T. & A. C. Tindall Aug. 29th, 1898, and in good standing. (San P S. 2377, 50877.)

Sections Nos. 55-56, certificate No. 370, C. & M. R'y. No. 55 patented to F. J. Parker, assignee, Oct. 12th, 1888, No. 56 sold to Day-

ton Moses March 16th, 1900, and in good standing. (San P. S. 2378, 50618.)

Sections Nos. 57-58, certificate No. 371, C. & M. R'y. No. 57, patented to F. J. Parker, assignee, Oct. 12th, 1888, No. 58 sold to Dayton Moses March 16, 1900, and in good standing. (San. P. S. 2379, 60328.)

246 Sections Nos. 59-60, certificate No. 372, C. & M. R'y. No. 59 patented to F. J. Parker, assignee, Oct. 12th, 1888, No. 60 leased to Jas. B. Wells for a term of five years from Feb. 8th, 1901. (San P. S. 2380, Lease No. 32423.)

Sections Nos. 61-62, certificate No. 4/1085, G. C. & S. F. Ry. Co. No. 61 patented to F. J. Parker, assignee, Oct. 13th, 1888, No. 62 sold to Wylie Seago June 23rd, 1896, but cancelled for abandonment April 19th, 1899, and leased to Robt. W. Fant of Alice, Texas, for a term of five years from April 20th, 1899. (San Pat. S. 2381, 39902, L. 26832.)

Sections Nos. 63-64, certificate No. 4/1086, G. C. & S. F. Ry. Co. No. 63, patented to F. J. Parker, assignee, Oct. 12th, 1888, No. 64 sold to G. T. and A. C. Tindall Sept. 5th, 1898, and in good standing. (San Patricio S. 2382, file No. 51251.)

Sections Nos. 65-66, certificate No. 4/1087, G. C. & S. F. Ry. Co. No. 65 patented to F. J. Parker, assignee, Oct. 11th, 1888, No. 66 sold to G. T. and A. C. Tindall July 16th, 1898, and in good standing. (San Patricio S. 2383, file No. 49817.)

Sections Nos. 67-68, certificate No. 4/1088, G. C. & S. F. Ry. Co. No. 67 patented to F. J. Parker, assignee, Oct. 13th, 1888, No. 68 sold to Theodore F. Dix July 16th, 1896, and patented to him Aug. 15th, 1900 (San Pat S. 2384, 39974.)

J. G. K.-2. 322.

Sections Nos. 69-70, certificate No. 4/1089, G. C. & S. F. Ry. Co. No. 69 patented to F. J. Parker, assignee, Oct. 14th, 1888, No. 70 sold to E. N. Jeffers, Feb. 9th, 1904, and in good standing. (San P? S?-2385, 77907.)

Sections Nos. 71-72, certificate No. 4/1090, G. C. & S. F. Ry. Co. No. 71 patented to F. J. Parker, assignee, Oct. 13th, 1888, No. 72 sold to G. T. and A. C. Tindall Aug. 29th, 1898, and in good standing. (San Patricio S. 2386, file 50876.)

Sections Nos. 73-74, certificate No. 4/1092, G. C. & S. F. Ry. Co. No. 73 patented to F. J. Parker, assignee, Oct. 13th 1888,

247 No. 74 leased to D. R. Fant of Alice, Texas, for ten years from Nov. 23rd, 1898. (San Pat. S. 2388, Lease No. 25745.)

Sections Nos. 75-76, certificate No. 4/1091, G. C. & S. F. Ry. Co. No. 75 patented to F. J. Parker, assignee, Oct. 13th, 1888, No. 76 leased to Robt. W. Fant for five years from April 20th, 1899. (San P. S.-2387, Lease No. 26832.)

Section Nos. 77-78, certificate No. 4/1093, G. C. & S. F. Ry. Co., No. 77 patented to F. J. Parker, assignee, Oct. 13th 1888, No. 78 leased to D. R. Fant for ten years from Nov. 23rd 1898. (San P. S. 2389, L. 23745.)

Sections Nos. 79-80, certificate No. 4/1094, G. C. & S. F. Ry. Co.

No. 79 patented to F. J. Parker, assignee, Oct. 13th, 1888, No. 80 leased to Jas. B. Wells for ten years from Feb. 15th, 1901. (San P. S.-2390, L 32457.)

Sections Nos. 81-82, certificate No. 4/1095, G. C. & S. F. Ry. Co. No. 81 patented to F. J. Parker, assignee, Oct. 13th, 1888, No. 82 leased to Jas. B. Wells for ten years from Feb. 15th, 1901. (San P. S.-2391, L. 32457.)

Sections Nos. 83-84, certificate No. 4/1096, G. C. & S. F. Ry. Co. No. 83 patented to F. J. Parker, assignee, Oct. 13th, 1888, No. 84, east part being 400 acres, leased to Jas. B. Wells for five years from Feb. 8, 1901, to west part, being 240 acres, leased to Jno. G. Kenedy of Alice, Texas, for ten years from May 8th, 1900. (San P. S. 2392, lease Nos. 30874, 32423.)

The total fees for the sketch and this statement amount to $10, balance of your remittance $8 is herewith returned by check on the American Nat'l Bank of this city.

Respectfully,

JOHN T. TERRELL,
Commissioner.

Callaway-Moore.

To the introduction of which said letter the Plaintiff objected on the ground that same was immaterial,—waiving the objections that the same was not certified or proven by the depositions of
248 the Commissioner of the General Land Office or otherwise,—*with* said objection that said letter was immaterial the court sustained.

To which said ruling of the Court the Defendants then and there excepted and now tender this their Bill of Exceptions, and pray that the same may be signed and made a part of the record herein.

Examined and approved this 2nd day of January, 1905.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

O. K.
C. K. BELL, *Att'y Gen'l.*

(Endorsed:) 18899. State of Texas *vs.* D. R. Fant. Bill of Exceptions. Filed Dec. 30, 1904, Jas. P. Hart, Clerk.

249 *Assignment of Errors.*

Filed January 18, 1905.

In the District Court, 26th Judicial District, of Travis County, Texas.

No. 18899.

THE STATE OF TEXAS
vs.
D. R. FANT and D. SULLIVAN.

Now comes the appellant herein, D. Sullivan, and assigns the following errors in the proceedings had on the trial of this case in the Court below.

First Assignment of Error.

The Court erred in overruling defendants' general demurrer to plaintiff's petition.

Second Assignment of Error.

The Court erred in refusing to admit in evidence a copy of the letter from the Commissioner of the General Land Office, dated ——— — — addressed to John G. Kenedy, as set forth in defendants' bill of Exception No. 1.

Third Assignment of Error.

The Court erred in rendering judgment for the State of Texas for Tract No. 1, described in the judgment herein, containing 4131.66 acres of land or Tract No. 2 containing 3813 acres of land, or any part thereof, because the undisputed evidence introduced on the trial of this cause shows that the Santa Rosa de Arriba grant as originally made by the State of Tamaulipas (which said grant is herein admitted belongs to this defendant) includes, covers and occupies all of Tracts Nos. one and two.

Fourth Assignment of Error.

The Court erred in rendering judgment for plaintiff for Tract No. 1, described in the judgment herein rendered containing 4131.66 acres of land and for Tract No. 2 containing 3813 acres of land or any part thereof, because the great preponderance of
250 the evidence shows that all of said tracts were included in and covered by the Santa Rosa de Arriba grant, which said grant was made by the State of Tamaulipas, which said grant so made belongs to this appellant.

Fifth Assignment of Error.

The Court erred in rendering judgment for plaintiff for tract No. 1 described in the judgment herein, containing 4131.66 acres

of land and for tract No. 2 containing 3813 acres of land or any part thereof, because the undisputed evidence introduced on trial of this cause shows that all the land included within said tracts was covered by and included within the said Santa Rosa de Arriba Grant, as confirmed by the Legislature of the State of Texas, which said confirmation included, applied to and covered all of the land included within and covered by the said Santa Rosa de Arriba Grant, as originally made by the State of Tamaulipas.

Sixth Assignment of Error.

The Court erred in rendering judgment for the plaintiff for Tract No. 1, containing 4131.66 acres of land and for Tract No. 2, containing 3813 —, described in the judgment herein rendered or any part thereof, because the great preponderance of the evidence shows that all the land included within said tracts was covered by and included in the Santa Rosa de Arriba Grant, as confirmed by the Legislature of the State of Texas, which said confirmation included, applied to and covered all of the land included within an covered by the Santa Rosa de Arriba Grant, as originally made by the State of Tamaulipas.

Seventh Assignment of Error.

The Court erred in rendering judgment for plaintiff for Tract No. 1, containing 4131.66 acres of land and for Tract No. 2, containing 3813 acres of land, described in the judgment herein rendered, or any part thereof, because the evidence introduced on the trial of this cause shows that all of the land contained in Tracts No. 1 and 2, was either covered by and included within the Santa Rosa de Arriba Grant, as originally made by the State of Tamaulipas, and as confirmed by the State of Texas, or was included within surveys Nos. 69, 70, 71, 72, 73, 76, 77, 80 and 81, in the name of the G. C. & S. F. R. R. Co.

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Eighth Assignment of Error.

The Court erred in rendering a judgment for plaintiff for Tract No. 1, containing 4131.66 acres of land, and Tract No. 2 containing 3813 acres of land, or any part thereof, because the evidence introduced upon the trial of this cause shows that the east line of the Santa Rosa de Arriba Grant, as claimed by the defendants, was in 1859 fixed, established and defined by the official surveyor in accordance with the provisions of an Act of the Legislature of the State of Texas confirming said grant, passed on February 10th, 1852, and that the said line as so fixed, established and defined has been repeatedly recognized by the State of Texas, and its various officers, by subsequent official surveys and by patents issued by the State of Texas to lands adjoining said eastern boundary line of said Santa Rosa de Arriba grant, and that the right and interest of the defendants herein in and to the lands included in said Tracts Nos. 1 and 2, and in and to the Santa Rosa de Arriba grant, have accrued to the said defendants and been acquired by them since the eastern

boundary line of said Santa Rosa de Arriba grant was so fixed, defined and established in accordance with said Act of the Legislature of the State of Texas, and since the same has been recognized by the State of Texas by official surveys and patents to lands adjacent thereto, and that the said rights and interest of the said defendants have been acquired by them in said lands on faith of the said official designation, establishment and dilineations of said eastern boundary line of the Santa Rosa de Arriba grant, and on the face of the recognition of the same so established by the State of Texas, and that hence the said State of Texas is estopped from now denying that the said eastern boundary line of the Santa Rosa de Arriba grant, as so fixed and established and as so recognized, is not the true and correct eastern boundary line of said Santa Rosa de
252 Arriba grant, as so fixed and established and as so recognized, is not the true and correct eastern boundary line of said Santa Rosa de Arriba Grant.

Ninth Assignment of Error.

The Court erred in rendering judgment for the plaintiff for Tract No. 1, containing 4131.66 acres of land and for Tract No. 2, containing 3813 acres of land, described in the judgment herein rendered, or any part thereof, because the provisions of the act of February 10th, 1852, confirming the Santa Rosa de Arriba Grant and authorizing and directing its survey by the official surveyor, and the subsequent survey thereof in 1859 by such official surveyor and the return of the field notes to the General Land Office as provided for and required by the said Act of February 10th, 1852, constituted a valid and binding judgment between the State of Texas and the then owners of said grant, whose title appellant has since acquired as to the boundaries of said grant and the undisputed evidence introduced on the trial of this cause shows that the boundaries of said grant as thus agreed upon between the State of Texas and the then owners of said grant included all of the land covered by said Tracts Nos. one and two, and the State of Texas was therefore not entitled to recover either of said tracts or any part thereof.

Tenth Assignment of Error.

The Court erred in not rendering judgment for appellant for all of the land included in Tracts No. 1, containing 4131.66 acres of land, and Tract No. 2, containing 3813 acres of land, or any part thereof, because it was established by the evidence introduced on the trial of this cause, that the Santa Rosa de Arriba grant now owned by this Appellant, includes all of said Tracts Nos. 1 and 2, as the said Santa Rosa de Arriba grant was originally granted by the State of Tamaulipas, and as the boundaries of the same have been fixed, determined and established by the official surveyors of the State of Texas, and in accordance with the provisions of the Act of Feb. 10th, 1852, and as the same has been recognized and acquiesced

in by the State of Texas ever since the year 1859, and as the
253 same has been used, occupied and enjoyed by this appellant and those under whom he holds title ever since and prior to the said year of 1859.

Eleventh Assignment of Error.

The Court erred in not rendering judgment for this appellant for all of the land included in Tract No. 1 and Tract No. 2 because the evidence introduced on the trial of this cause shows that all of said land is covered by and included within the boundaries of the Santa Rosa de Arriba grant as originally made by the State of Tamaulipas.

Twelfth Assignment of Error.

The Court erred in not rendering judgment for this appellant for all the lands included in Tracts Nos. 1 and 2, because the evidence introduced on the trial of this cause shows that all of said lands are included within and covered by the Santa Rosa de Arriba Grant, as its eastern boundary line was defined and established by the official surveyor in accordance with and under the provisions of the Act of the Legislature of the State of Texas, passed on February 10th, 1852, and as the said eastern boundary line has been recognized and acquiesced in by the State of Texas, and all of its officers, ever since the same was so established and defined in 1859 by the official surveyor in accordance with the provisions of said Act.

Thirteenth Assignment of Error.

The Court erred in not rendering judgment for this appellant for all of the land included within Tracts Nos. 1 and 2, because it was proven upon the trial of this cause that the eastern boundary line of the Santa Rosa de Arriba Grant and the western boundary line of surveys Nos. 69, 70, 71, 72, 73, 76, 77, 80 and 81 in the name of the G. C. & S. F. R. R. Co. is the common boundary line between the said Santa Rosa de Arriba Grant and the said G. C. & S. F. R. R. Co. surveys, and that hence there was no land lying between the said eastern boundary line of the said Santa Rosa de Arriba Grant and the western boundary line of the said G. C. & S. F. R. R. Co. surveys, which the State of Texas was entitled to recover in
254 this cause.

Fourteenth Assignment of Error.

The Court erred in not rendering judgment for this appellant for Tracts Nos. 1 and 2, because the evidence introduced on the trial of this cause was wholly insufficient to entitle the State of Texas to recover said Tracts Nos. 1 and 2, or any part thereof.

Fifteenth Assignment of Error.

The Court erred in not rendering judgment for this appellant for Tracts Nos. 1 and 2, because the evidence introduced on the

trial of this cause was wholly insufficient to overcome the presumption which the Court should have indulged in favor of the correctness of the survey of the Santa Rosa de Arriba grant made by the official surveyor in 1859, which said presumption was strengthened by the repeated recognition of the correctness of the said survey by the State of Texas, and its officers in the field notes and patents of the adjoining grants and surveys.

Sixteenth Assignment of Error.

The Court erred in rendering judgment for Tract No. 3, described in the judgment rendered herein, because the evidence introduced on the trial of this cause shows that all the land covered by and included within said Tract No. 3 is covered by and included in the grant and surveys belonging to this appellant to-wit, the Santa Rosa de Arriba grant, El Tule grant, Survey No. 155, in the name of the Texas Mexican Ry. Co., and the San Antonio del Encinal grant, and survey No. 156, Texas Mexican Ry. Co., which is leased by the defendant from the State of Texas.

Seventeenth Assignment of Error.

The court erred in rendering judgment for plaintiff for Tract No. 3, described in the judgment herein rendered, because the evidence introduced on the trial of this cause shows that all the land included within Tract No. 3 is covered by and included within the grant and surveys mentioned in the last foregoing assignment of error, and that the State of Texas is not in any manner in-
255 terested in nor can it in any manner be benefited by a solution of the question as to where the true division line between the Santa Rosa de Arriba grant and the grants lying to the west thereof can be established, since the El Tule grant, both as originally patented by the State of Tamaulipas, and as confirmed and patented by the State of Texas, and the San Antonio del Encinal grant as originally made by the State of Tamaulipas and as confirmed and patented by the State of Texas, call for the western boundary line of the Santa Rosa de Arriba grant to be the eastern boundary line of the said El Tule and San Antonio del Encinal grants, and there was not sufficient evidence introduced on the trial of this cause which would authorize or justify the Court in finding that there was any vacant or unappropriated lands which the State of Texas was entitled to recover lying between the western boundary line of the Santa Rosa de Arriba and the eastern boundary line of the said El Tule grant and San Antonio del Encinal grant, and because the field notes of surveys Nos. 155 and 156, in the name of the Texas Mexican Ry. Co., call for the western boundary line of the Santa Rosa de Arriba and the eastern boundary line of the said surveys Nos. 155 and 156, and there was not sufficient evidence introduced on the trial of this cause which would authorize the court in finding that there was any vacant or unappropriated land which the State of Texas was entitled to recover herein lying between the eastern

boundary line of surveys Nos. 155 and 156, and the western boundary line of the said Santa Rosa de Arriba grant.

Eighteenth Assignment of Error.

The Court erred in rendering judgment for the plaintiff for said Tract No. 3, described in the judgment rendered herein, or any part thereof, because the Court should have found that on the evidence introduced on the trial of this cause that the western boundary line of the Santa Rosa de Arriba Grant and the eastern boundary line of the El Tule, or surveys 155 and 156 in the name of the Texas Mexican Ry. Co., and of the San Antonio del Encinal
256 grant were coincident, and that there was no vacant or unappropriated land which the State of Texas was entitled to recover herein, situated between the said Santa Rosa de Arriba grant on the east and the El Tule grant, the San Antonio del Encinal grant and surveys Nos. 155 and 156 on the west.

Nineteenth Assignment of Error.

The Court erred in not rendering judgment for this appellant for all the land included in and covered by Tract No. 3, because the evidence introduced on the trial of this cause, shows that all of said land is included within the Santa Rosa de Arriba Grant, the El Tule grant, the San Antonio del Encinal grant and survey No. 155, Texas Mexican Ry. Co., all of which are owned by this appellant, and survey No. 156, in the name of the Texas Mexican Ry. Co., which is leased from the State by this appellant.

Twentieth Assignment of Error.

The Court erred in not rendering judgment for this appellant for Tract No. 3, because the evidence introduced on the trial of this cause shows that all of said Tract No. 3, is included within and covered by the Santa Rosa de Arriba grant, as originally made by the State of Tamaulipas and as confirmed by the State of Texas by the Act of February 10th, 1852.

Twenty-first Assignment of Error.

The Court erred in rendering judgment for plaintiff for Tract No. 3, because the evidence introduced on the trial of this cause shows that all the land included within said Tract No. 3, is included within and covered by the Santa Rosa de Arriba as its boundaries were fixed, established and defined in 1859 by a resurvey thereof by the official surveyor under and in accordance with the provisions of the Act of the State of Texas of Feb. 10th, 1852, and as the same has been recognized and acquiesced in by the State of Texas ever since that date.

Twenty-second Assignment of Error.

The Court erred in rendering judgment for the plaintiff for any portion of Tracts Nos. 1, 2 and 3 mentioned and described in
257 the judgment herein rendered, because the evidence introduced on the trial of this cause shows that all of the land

covered and included in all of said Tracts Nos. 1, 2 and 3 was included within the boundaries of the Santa Rosa de Arriba grant, as the same was resurveyed by F. A. Blucher in 1859, under and in accordance with the term and provisions of an Act of the Legislature of the State of Texas, passed February 10th, 1852, the said F. A. Blucher then being the official surveyor authorized under said Act to make said survey, and that the field notes of said survey were duly returned to the General Land Office under and in accordance with the provisions of said Act of the Legislature.

Twenty-*second* Assignment of Error.

The Court erred in not rendering a judgment for the defendant for all of the land described in plaintiff's petition, because the evidence introduced upon the trial of this cause shows that all of said land is included within surveys Nos. 69, 70, 71, 72, 73, 76, 77, 80 and 81, in the name of the G. C. & S. F. R. R. Co., and in the Santa Rosa de Arriba grant, the San Antonio del Encinal grant, the El Tule grant, and surveys Nos. 155 and 156, in the name of the Texas Mexican Ry. Co.

J. C. SULLIVAN,
OGDEN & BROOKS,
Att'ys for Appellant, D. Sullivan.

(Endorsed:) No. 18899. The State of Texas *vs.* D. R. Fant & D. Sullivan. In the District Court of Travis County, Tex., 26th Judicial Dist. Assignment of Errors. Filed Jan'y 18, 1905, Jas. P. Hart, Clerk.

258 *Bill of Costs.*

In District Court of Travis County, Texas.

No. 18899.

THE STATE OF TEXAS.
vs.
D. R. FANT ET AL.

Clerk's Costs.

Docketing suit	$.20
Issuing Citations & Duplicate	1.75
Issuing Copy Petition & Certificate	2.60
Entering Appearances	.45
Entering Continuances	1.00
Entering Motion	.15
Entering Orders	10.75
Filing Papers	15.60
Entering Judgment	4.75
Taking Affidavits	1.00
Swearing Witnesses	1.40

Opening and filing Depositions	.30
Approving Bond	1.50
Transcript	227.75
Assessing damages	.50
Filing and Certifying Brief	.90
Copy Judgment	4.50
Copies Orders & Precepts &c	14.75
Taxing Costs	.25
Louis Kewolski, Notary Public	3.00
Surveyor's Fees	547.52
G. S. Mathews, Sheriff, Venire fee	.50
Travis County, Stenographer Fee	3.00
Total	$844.12

259 *Clerk's Certificate.*

THE STATE OF TEXAS, *County of Travis:*

I, Jas. P. Hart, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the above and foregoing on 281 pages is a true and correct Transcript of all the proceedings had in cause No. 18,899, of The State of Texas *vs.* D. R. Fant *et al.,* as the same appear of record and on file in this office.

In witness whereof, I hereunto set my hand and seal of office, at Austin, Texas, this January 27th, A. D. 1905.

[SEAL.] (Signed). JAS. P. HART,
Clerk District Court, Travis County, Texas.

(Endorsed:) No. 3639 Assignment. D. R. Fant and D. Sullivan Appellants *vs.* The State of Texas, Appellee. From the District Court of Travis County, for the 26th Judicial District of Texas, at Austin, Texas. Applied for by J. C. Sullivan and Ogden & Brooks Attorneys for appellants on the 18th day of January, A. D., 1905, and delivered to the above named attorneys on the 28th day of January, 1905. Jas. P. Hart, Clerk of the District Court of Travis County. Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas, Mar. 27, 1905. R. H. Connerly, Clerk.

260 *Proceedings in Court of Civil Appeals.*

Judgment.

Judgment of Court of Civil Appeals.

Rendered December 6th, 1905.

No. 3639.

D. R. FANT ET AL.
vs.
THE STATE OF TEXAS.

Appeal from District Court of Travis County.

Opinion by Associate Justice EIDSON:

This cause came on to be heard on the transcript of the record, and the same being inspected because it is the opinion of the Court that there was no error in the judgment, It is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed, that the appellant D. Sullivan, principal, and his sureties Daniel J. Sullivan and Walter Sullivan pay all costs in this behalf expended, and this decision be certified below for observance.

No. 3639.

D. SULLIVAN ET AL., Appellants,
vs.
THE STATE OF TEXAS, Appellee.

Appeal from the District Court of Travis County.

Opinion.

261 This is an action brought by the Attorney General in behalf of the State of Texas to determine the exact location and boundaries of a grant emanating from the Mexican Government, under which appellants claim title to the land in controversy and to recover the quantity of land in the tract claimed by appellants in excess of the quantity embraced within the exact boundaries of the original grant. There was a recovery of such excess by the State in the court below, and defendants have appealed to this court.

Appellants' first assignment of error complains of the action of the court below in overruling their general demurrer to plaintiff's petition, their contention being that the petition does not sufficiently describe the land sought to be recovered. The petition alleges "that on the first day of January A. D. 1890, the State of Texas, plaintiff herein, then was and still is the owner in fee simple (the same be-

longing to the common free school fund of the State of Texas) of a certain tract of land situated in the county of Hidalgo, in the State of Texas, and particularly described as follows:—(Here specific metes and bounds are given) containing 55,500 acres of land.

"That plaintiff was in possession of said land, and is now entitled to possession of the same, that on the said 1st day of January A. D., 1901, the defendant, without authority of law, entered upon said land and dispossessed the plaintiff thereof, and held, occupied and claimed the same adversely to plaintiff, and is still so doing, to plaintiff's damage in the sum of twenty thousand dollars. "That the rental value of said land is 5 cents per acre per annum.

"That as plaintiff is informed and believes and here charges, the defendant claims title to said land, and to be entitled to the possession thereof, by virtue of a grant from either the Spanish or Mexican Government, made for six and one-half leagues of land to Pedro de la Garza, and plaintiff here admits that there was such a grant in favor of the party named for the amount of six and one half leagues, that said grant was confirmed to the said original
262 grantee thereof and to his heirs and legal assigns by the State of Texas, by virtue of an act of the Legislature of the State of Texas of the 10th day of February, A. D., 1852, for the full amount of six and one-half leagues and no more.

"That by the law of February 10th, 1852, above referred to, said Pedro de la Garza or his heirs or legal assigns, as the case may have been, was required to have the said six and one-half leagues of land surveyed by the district or county surveyor of Starr County, in which said land at that time was situated, and upon return of the proper field notes thereof to the general land office, the commissioner was authorized to have the same plotted on the maps of his office and to issue patents for the same in accordance with the existing laws, upon payment by the owner of said land of all the taxes due on the same from the date of the organization of the said county.

"Plaintiff further alleges that the defendant, claiming under and by virtue of said grant and the confirmation thereof, has taken possession of a great deal more land which really belongs to the State of Texas, than the said six and one-half leagues, but that neither the said defendant nor anyone else had ever segregated from the public domain the amount of land which can be legally held by virtue of the aforesaid grant.

"Premises considered, the State of Texas, plaintiff herein, prays that the defendant be cited to answer this petition as required by law, that upon final hearing hereof, the State of Texas, plaintiff herein, have judgment against the defendant for the recovery of the title and possession of all of said land in excess of the six and one-half leagues, with writ of possession for the same, and damages and for the rental value of the use and occupation of such excess, together with ten per cent. thereon as attorney's fees, for costs of suit, and for all other and further relief, to which plaintiff may be entitled both in law and in equity."

Section II, Chapter 4 Acts of the First Called Session of the 27th

Legislature, page 6, provides as follows: "The Attorney
263 General of this State is hereby directed and required to institute and prosecute in the name of the State of Texas, such suits as may be necessary to recover from the person or persons in possession thereof, or claiming title thereto, all lands which are held or claimed under titles emanating from the Spanish or Mexican governments where no valid evidences of such grants are to be found in the records or among the files of the general land office, and also such suits as may be necessary to determine the exact location and boundaries of such lands, where the evidence on file in the general land office does not sufficiently identify the land claimed, and such suits shall be brought, prosecuted and tried in the district court of Travis County, Texas."

This provision authorizes suits in two instances:—In one for the recovery from the person or persons in possession thereof, or claiming title thereto of all lands which are held or claimed under titles emanating from the Spanish or Mexican governments, where no valid evidences of such grants are to be found in the records or among the files of the general land office, and in the other, when it is necessary to determine the exact location and boundaries of such lands, where the evidence on file in the general land office does not sufficiently identify the land claimed. The allegations of the petition show that one object of the suit was to determine the true location and boundaries of the grant emanating from the Spanish or Mexican government, and under which appellants claim the land in controversy. Evidently this was authorized by the last clause of the provision above quoted. It also appears from the allegations of said petition that the appellants are claiming more land than they are entitled to by virtue of said grant, and that no legal survey of said grant has been made and field notes thereof returned to the general land office as required by law, and that such excess belongs to the school fund and its recovery is sought in this suit. This allega-
tion is sufficient to authorize the suit for said excess under the
264 first clause of the above quoted provision of law, and also under sec. 8 ch. 11, Laws 1st Called Session 26th Legislature p. 33, which authorizes the Attorney General to bring suits for lands belonging to the public free school fund.

We think the allegations of the petition were sufficient to authorize the court to determine the true location and boundaries of the six and one-half leagues of land to which appellants were entitled under the legislative act of confirmation, and to decree to the appellee the excess over that quantity in the tract described in the petition and claimed adversely by appellant-, and therefore, the petition was not subject to a general demurrer. Appellants' claim to the land in controversy emanates from the Mexican grant of six and one-half leagues to Pedro de la Garza, made in 1832, which was confirmed by an act of the Legislature of the State of Texas on the 10th day of February, 1852. This act provides "that it shall be the duty of those claiming any of the lands named in this Act to have the same surveyed by the district or county surveyor of the county in which the same may be situated, and upon the return of the field

notes thereof to the general land office, the commissioner is hereby authorized and required to have the same plotted on the maps of his office, and issue patents for the same in accordance with existing laws, provided that no patent shall issue for a less amount than the original grant, that the owners of said land shall be required to pay the taxes due on the same from the date of the organization of the respective counties herein mentioned, which taxes shall be paid and legal vouchers for the same exhibited to the commissioner of the general land office before the patent for the same shall issue."

In pursuance to this provision a survey was made by Felix A. Von Blucher, deputy district surveyor of Cameron Land District, in May 1859, the field notes of which, with a map or sketch accompanying same, were filed in the general land office August 5th, 1869, having on them the folowing endorsements:—

"File 545 San Patricio 1st Class. Field notes 8 Leagues. Pedro de la Garza, Filed Aug. 5, 1869.

265 "It appears according to Antonio Garza Field notes 1–556 that these field notes are *"correct,"* (evidently for "corrected"), but not returned yet. April 6/71 M. Stakemen, confirmed for 6½ leagues.

"Closes partly all but the approximate area found with apportioning errors is 267, 552, 959 sq. vrs. equals 10 Leagues 17½ Labores or 55, 252, 959 sq. vrs. too much. Aug. 21, '69, Richardson $2."

The tract of land described in plaintiff's petition, a part of which it sues for in this action, is subsfantially the same as that described in the field notes of Blucher. This land has never been patented by the State of Texas. The Mexican grant was made by the State of Tamaulipas for 6½ leagues of pasture land, and is in the name of Santa Rosa De Arriba. The land embraced in this original grant was surveyed by Antonio Canales, surveyor general for the State of Tamaulipas, December 5th, 1832, and field notes made out, with a map accompanying same, showing the boundaries and configuration thereof and the quantity to be 6 leagues, 20,782,500 sq. var. The survey made by Blucher contains 10 leagues and 17½ labors of land.

There is a forfeited survey made under a Mexican grant lying immediately east of the Arriba, in the name of Santa Rosa de Abajo, the territory of which has been covered by the location of railroad certificates, and east of the Abajo, are a number of surveys based on Mexican grants which have been confirmed and patented by the State of Texas, and on the west of the Arriba survey are situated the Tule and Encinal surveys, which are confirmed and patented Mexican grants, and Nos. 155 and 156, Texas Mexican Railroad Co. surveys, which are patented.

Appellee claims that by locating the Arriba survey according to the survey made by Canales, and locating the surveys on its east and west according to the field notes of their patents, there will be found to exist a vacancy on the east and west of the said Arriba, as found by the court below.

266 The appellants claim that the survey made by Blucher practically conforms to the survey made by Canales. The

court below, in rendering the judgment, found against appellants' contention and in favor of that of appellee. The question as to whether the true location of the Arriba survey, as surveyed by Canales under the Mexican grant, was where the court below found it to be, was one of fact to be determined from all the evidence adduced upon the trial upon that issue, and we think that the finding of the court locating it so as to show the vacancies on its east and west, embracing the land for which judgment was rendered for the plaintiff, is supported by the evidence. The testimony is conflicting as to the exact location, and, in some instances, as to the identity of certain points and natural objects called for in the field notes of the Arriba and previous and surrounding surveys, but the solution of such conflict was peculiarly the province of the court below trying the case without a jury, and its action in solving the conflict against appellants will not be disturbed by this court. And the credibility and weight to be given to the testimony of certain witnesses who testified in reference to finding rocks at or near points claimed by appellee to be the corners of certain surveys, were also matters for the determination of the court below, and there is nothing in the record to justify this court in holding that the court below should not have considered such testimony. The survey provided for in the act of confirmation was to be made of the land originally granted by the Mexican authorities, and could not legally include any other land. (Clark *vs.* Hills, 67 Tex., 145-6.) And if the survey caused to be made by the owners of the grant in this case under the act of confirmation included other or more land than the original grant and survey made by virtue thereof, it would be void as to such other land or excess.

The judgment of the court below involves a finding that the evidence on file in the general land office does not sufficiently identify the land claimed by appellants, and we think its finding in this respect is supported by the evidence. Appellants con-
267 tend, under various assignments of error, that the provisions of the act of 1852 confirming the grant under which they claim, and providing for the survey of the land embraced in said grant, constituted a valid and binding agreement upon the part of the state with the owners of said grant, that they should acquire or be entitled to the land embraced in the survey made in pursuance to the provisions of said act. We do not think this contention of appellants is sound. Evidently, the right to the land was not dependent upon the survey, and the survey only became important when the land had not been previously surveyed so as to segregate it from the adjoining territory, or in the event the description of the land in the former survey was so vague as to require a survey to designate and fix its boundaries with certainty. (Clark *vs.* Hills, *supra*, 146, Waterman *vs.* Smith, 13 Cal., 373, Morrow *vs.* Whitney, 95 U. S. 554, West *vs.* Cochran, 17 How., 403, Langdeau *vs.* Haynes, 21 Wall., 529.) The land embraced in the grant had been properly surveyed and segregated from other territory prior to the act of confirmation, and the only purpose of the re-survey after the confirmation would have been to re-trace, remark and thus make plain, the

boundaries of the original survey. The act of confirmation does not make the surveyor the agent of the State so as to bind it by his act in surveying the land. According to the common acceptation of the language employed in said act, he is made the agent of the claimant of the land, as the duty to have the survey made is imposed upon such claimant. In our opinion, the contract or agreement embraced in the act of confirmation upon the part of the State only extends to a relinquishment of the land embraced in the original grant. (Clark *vs.* Hills, *supra*, 145, Ryan *vs.* Carter, 93 U. S., 82, Langdeau *vs.* Haynes, *supra* 529.)

Appellants also contend that the State is estopped from claiming the excess in the quantity of land embraced in the Blucher survey over that included in the original grant and survey thereunder, because of the acts and conduct of the commissioner of the general land office in reference to the Blucher survey, and the failure of
268 the State to assert title to such excess prior to the institution of this suit, which they claim, constituted an acceptance and recognition by the State of the correctness of the Blucher survey. If the doctrine of estoppel *in pais* would, under any circumstances, apply to the State (which we do not decide) we are clearly of opinion that the evidence in this case falls far short of showing such estoppel. In fact, there is evidence tending to show the disapproval by the State of the Blucher survey. The endorsements upon the field notes thereof above quoted, and the failure to patent the land according to said survey, are evidence of this character. The delineation of the Arriba survey on the map by the commissioner of the general land office, while made after the Blucher survey, may have been intended to represent the survey as originally made conformably to the grant for 6½ leagues. But, conceding that it was intended to represent the Blucher survey, such delineation was simply the unauthorized act of a ministerial officer, which could not bind the State. Neither do the calls for the lines of the Arriba survey in the various patents issued by the state on surrounding surveys constitute evidence of estoppel on the part of the State. These are all facts admissible in evidence on the question of the true location of the boundaries of the Arriba survey as originally made, but not as matter of estoppel. (Saunders *vs.* Hart, 57 Tex., 10 Day Co. *vs.* the State, 68 Tex., 553, Railway *vs.* The State, 36 S. W. 115, Cameron *vs.* the State 4 Tex. Crt. Rep. 91/103 to 106.)

The holding of the court in confining the surveys situated on the east and west of the Arriba to their boundaries as patented, was correct. The owners of these surveys, by the acceptance of the patents, relinquished all claims to any land that may have been included in the grant confirmed, but not embraced in their patents. (United States *vs.* Roselius, 15 How. 31; Arguella *vs.* United States, 18 How. 546, Forbes *vs.* Withers, 71 Tex. 302.)

The question of boundary involved in the case of the State *vs.* Russell, 11 Crt. Rep. 869, cited by appellants was one of fact,
269 and the trial court held adversely to the State's contention, and this court simply held that such holding was supported by the evidence (*Id.* 875).

The contention of appellants that the Arriba survey is embraced in the external lines of a block of surveys all made at the same time, with the intention of appropriating all the land within such external lines to the different surveys included therein, and that therefore, the State is not interested in the true or exact location of the division lines between such surveys, is not supported by the evidence, in that it does not appear therefrom that the Arriba and surrounding surveys were made at the same time, and besides, the evidence shows that according to the field notes of the surveys east and west of the Arriba, as patented, such surveys are separated from the Arriba as originally surveyed.

None of the appellants' assignments of error is well taken, and hence, we overrule all of them. There being no reversible error contained in the record, the judgment of the court below is affirmed.

(Signed) EIDSON,
Associate Justice.

Affirmed.

(Endorsed:) With app. No. 5058. No. 3639. D. Sullivan *et al.*, Appellants *vs.* The State of Texas, appellee. Appeal from Travis County. Opinion. Affirmed. Eidson, Associate Justice. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Dec. 6, 1905. R. H. Connerly, Clerk. Filed in Supreme Court Apr. 23, 1906. F. T. Connerly, Clerk.

270 *Motion to Argue Rehearing Orally.*

No. —.

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

D. SULLIVAN
vs.
THE STATE OF TEXAS.

Now come appellant herein, and moves the Court to permit oral argument on the Motion for Rehearing in this case for the following reasons, to-wit:—

I.

The effect of the decision of the Court in this case if adhered to, will be to unsettle the title to several hundred thousand acres of land, located between the Nueces and Rio Grande Rivers. The questions involved are, therefore, of vast importance, not only to this Appellant, but to many other land owners in that section of the country. It is, therefore, of the utmost importance that the fullest possible hearing shall be given by the Court to the questions involved in this case in order that a correct decision of them may be reached.

II.

The decision of this Court, in so far as it determines the effect of the re-survey of the confirmed Grants under the Acts of 1852, is, as this appellant sincerely believes, wholly without support in any adjudicated case. Every decision which has ever been rendered by any appellate court is exactly to the contrary of the ruling of the Court in this case, on that question. This, Appellant believes can be plainly demonstrated, if this Court will permit oral argument on the Motion for Rehearing.

III.

The evidence adduced at the trial of this case in the Court below, touching the boundary of the original Grant as confirmed is
271 voluminous The oral argument of these facts will be helpful to the Court in reaching a correct decision of the questions involved. The Appellant insists that he has the right to have this Court review this entire record, and reach its own conclusion, as to the proper decision of each and every question involved, and most respectfully suggest-, that this Court should not dispose of the issues involving the boundaries of the original Grant, by declining to review, or disturb the finding of the Court below.

IV.

The far-reaching importance of the questions involved in this case are such that the Appellant feels that this Court should give to them the fullest possible hearing, and to that end, most respectfully, but earnestly, requests that this Motion may be granted, and the oral argument on the Motion for Rehearing be heard.

(Signed) J. C. SULLIVAN,
OGDEN & BROOKS,
Attorney- for Appellant.

(Endorsed:) Mo. 2391. D. Sullivan *vs.* State of Texas. Motion to permit oral argument on motion for rehearing. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Jan. 18, 1906. R. H. Connerly, Clerk.

Order on Above Motion.

Order Made January 31st, 1906.

Overruling Motion for Oral Argument on Rehearing.

Motion 2391. No. 3639.

D. SULLIVAN
vs.
STATE OF TEXAS.

Appeal from Travis County.

Motion to argue motion for rehearing orally. The motion is overruled.

272 *Motion for Rehearing.*

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

D. SULLIVAN, Appellant,
vs.
STATE OF TEXAS, Appellee.

Now comes the appellant herein D. Sullivan, and moves the court to set aside the judgment herein rendered, and grant your appellant a rehearing for the following reasons to-wit:—

1. This court erred in overruling and in not sustaining appellant's first assignment of error.
2. This court erred in overruling and in not sustaining appellant's first proposition under the first assignment of error.
3. This court erred in overruling and in not sustaining appellant's second proposition under the first assignment of error.
4. This court erred in overruling and in not sustaining appellant's third proposition under the first assignment of error.
5. This court erred in overruling and in not sustaining appellant's second assignment of error.
6. This court erred in overruling and in not sustaining appellant's third assignment of error.
7. This court erred in overruling and in not sustaining appellant's fourth assignment of error.
8. This court erred in overruling and in not sustaining appellant's first proposition under the second, third and fourth assignments of error.
9. This court erred in overruling and in not sustaining appellant's second proposition under the second, third and fourth assignments of error.
10. This court erred in overruling and in not sustaining appellant's fourth proposition under the second, third and fourth assignments of error.

273 11. This court erred in overruling and in not sustaining appellant's third proposition under the second, third and fourth assignments of error.

12. This court erred in overruling and in not sustaining appellant's fifth proposition under the second, third, and fourth assignments of error.
13. This court erred in overruling and in not sustaining appellant's fifth assignment of error.
14. This court erred in overruling and in not sustaining appellant's sixth assignment of error.
15. This court erred in overruling and in not sustaining appellant's first proposition under the sixth assignment of error.
16. This court erred in overruling and in not sustaining appellant's seventh assignment of error.

17. This court erred in overruling and in not sustaining appellant's first proposition under the seventh assignment of error.
18. This court erred in overruling and in not sustaining appellant's eighth assignment of error.
19. This court erred in overruling and in not sustaining appellant's ninth assignment of error.
20. This court erred in overruling and in not sustaining appellant's tenth assignment of error.
21. This court erred in overruling and in not sustaining appellant's eleventh assignment of error.
22. This court erred in overruling and in not sustaining appellant's twelfth assignment of error.
23. This court erred in overruling and in not sustaining appellant's first proposition under the eleventh and twelfth assignments of error.
24. This court erred in overruling and in not sustaining appellant's thirteenth assignment of error.
25. This court erred in overruling and in not sustaining appellant's fourteenth assignment of error.
274 26. This court erred in overruling and in not sustaining appellant's first proposition under the thirteenth and fourteenth assignments of error.
27. This court erred in overruling and in not sustaining appellant's second proposition under the thirteenth and fourteenth assignments of error.
28. The court erred in overruling and in not sustaining appellant's fifteenth assignment of error.
29. The court erred in overruling and in not sustaining appellant's sixteenth assignment of error.
30. The court erred in overruling and in not sustaining appellant's first proposition under the fifteenth and sixteenth assignments of error.
31. The court erred in overruling and in not sustaining appellant's second proposition under the fifteenth and sixteenth assignments of error.
32. The court erred in overruling and in not sustaining appellant's seventeenth assignment of error.
33. The court erred in overruling and in not sustaining appellant's eighteenth assignment of error.
34. The court erred in overruling and in not sustaining appellant's nineteenth assignment of error.
35. The court erred in overruling and in not sustaining appellant's twentieth assignment of error.
36. The court erred in overruling and in not sustaining appellant's first proposition under the twentieth assignment of error.
37. The court erred in overruling and in not sustaining appellant's second proposition under the twentieth assignment of error.
38. The court erred in overruling and in not sustaining appellant's third proposition under the twentieth assignment of error.
39. The court erred in overruling and in not sustaining appel-

lant's fourth proposition under the twentieth assignment of
275 error.

40. The court erred in overruling and in not sustaining appellant's twenty-first assignment of error.

41. The court erred in overruling and in not sustaining appellant's twenty-second assignment of error.

42. The court erred in affirming the judgment in this case.

43. The court erred in not reversing and rendering judgment herein for this appellant.

44. The court erred in not reversing and remanding the judgment.

45. This court erred in holding that the Act of February 10, 1852, and the survey by the official surveyor of the Santa Rosa de Arriba under the said Act did not constitute a valid and binding contract between the State of Texas, acting in its sovereign capacity and the owners of the said grant.

46. The court erred in not holding that the Act of February 10, 1852, and the Acts of 1870 and 1871, and the surveys had thereunder, in the matter of the surveys of the Santa Rosa de Arriba, the San Antonio Del Encinal and the El Tule grant constituted valid and binding contracts between the owners of said grants, and the State of Texas.

47. The court erred in affirming the judgment of the court below, because the Act of the 27th Legislature, Section 11, Chapter 4,—of the First Called Session,—as construed and enforced against this appellant, is void, because in conflict with the Constitution of the United States, in that the said Act as so construed and enforced impairs the obligation of a valid, subsisting, and binding contract between the owners of the Santa Rosa De Arriba grant and the State of Texas, as evidenced by the provisions of an Act of the Legislature of the State of Texas, of date February 10, 1852, and the survey of the said Santa Rosa de Arriba by the official surveyor, under and in accordance with the provisions of the said Act of February 10, 1852, which said contract was entered into prior to the passage of the said Act of the 27th Legislature, which as so con-
276 strued and enforced by this court against this appellant, is an attempt upon, the part of the State of Texas to repudiate the said binding and subsisting contract, and impair the obligation thereof, and is therefore in violation of the Constitution of the United States, and contrary to the provisions of Paragraph 1, Section 10 of Article 1 of the Constitution of the United States, and contrary to Sec. 16 of Art. 1 of the Constitution of the State of Texas.

48. The Court erred in affirming the judgment of the trial court, because the Act of the 27th Legislature, above referred to, as construed and enforced by this court, impairs the obligation of the valid and subsisting contract between the State of Texas, and the owners of the Santa Rosa de Arriba, the El Tule, and the San Antonio del Encinal, under the judgments of 1872 and 1873, and the surveys thereunder.

49. The court erred in affirming the judgment herein, because the act of the 27th Legislature, above referred to, as construed and

enforced against this appellant by this court as void contrary to, and in violation of the Constitution of the United States, in that it deprives appellant of his property without due process of law, and without compensation.

50. The court erred in affirming the judgment in that the said Act of the 27th Legislature, above referred to, as construed and enforced by this court against this appellant, is in violation of and contrary to the provisions of the Constitution of the United States, and of the State of Texas, in that it denies to this appellant the equal protection of the laws of the land.

51. The court erred in holding that the judgment of the court below involves a finding that the evidence on file in the General Land Office does not sufficiently identify the land claimed by appellants, and that the finding in this respect is supported by the evidence.

52. The court erred in holding that the Act of February
277 10, 1852, does not make the surveyor the agent of the State, so as to make his act, in surveying the land, binding upon the State.

53. The court erred in affirming the judgment of the Court below, because under the original survey as made by Canales and the confirmation of the original grant as made by the former Sovereign by the issuance of the Testimonio, the survey as made by Canales being identical in every respect with the survey as made by F. A. v. Blucher, the said survey of said Blucher merely re-established the boundaries of said grant as originally made.

54. The court erred in affirming the judgment of the Court below because the judgment of the Court below is in violation of the Treaty of Guadalupe-Hidalgo for this, that the survey as made by Canales was carried in the Grant of the Santa Rosa de Arriba and therefore said grant is protected and rights acquired thereunder are protected by the said Treaty.

(Signed) OGDEN & BROOKS &
J. C. SULLIVAN,
Attorneys for Appellant.

(Endorsed:) With App. No. 5058 Mo. 2369. D. Sullivan, Appellant *vs.* State of Texas, appellee. Motion for rehearing. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas Dec. 20, 1905, R. H. Connerly, Clerk. Filed in Supreme Court Apr. 23, 1906, F. T. Connerly, Clerk.

Order Overruling Above Motion.

Order Made March 21st, 1906.

Overruling Motion for Rehearing.

Motion 2369. No. 3639.

D. SULLIVAN
vs.
STATE OF TEXAS.

Appeal from Travis County.

Motion for a rehearing. The motion is overruled. Opinion by Associate Justice Eidson.

278 *Opinion on Rehearing.*

No. 3639.

D. SULLIVAN ET AL., Appellants,
vs.
THE STATE OF TEXAS, Appellee.

Appeal from Travis County.

Opinion on Motion for Rehearing.

All of the grounds embraced in appellant's motion for rehearing were passed upon and overruled in the original opinion in this cause, except the following, which were for the first time presented in said motion:—

"47. The court erred in affirming the judgment of the court below, because the act of the 27th Legislature, Section 11, Chapter 4 of the First Called Session, as construed and enforced against this appellant is void, because in conflict with the Constitution of the United States, in that said act as so construed and enforced impairs the obligation of a valid, subsisting and binding contract between the owners of the Santa Rosa de Arriba grant and the State of Texas, as evidenced by the provisions of an act of the Legislature of the State of Texas, of date February 10th, 1852, and the survey of said Santa Rosa de Arriba by the official surveyor, under and in accordance with the provisions of the said Act of February 10, 1852, which said contract was entered into prior to the passage of the said Act of the 27th Legislature, which as so construed and enforced by this court against this appellant, is an attempt upon the part of the State of Texas to repudiate the said binding and subsisting contract and impair the obligation thereof, and is therefore in violation of the Constitution of the United States and contrary to the provisions of

graph 1, section 10, of Article 1 of the Constitution of the ed States, and contrary to Sec. 16 of Art. 1 of the Constitution e State of Texas.

"48. The court erred in affirming the judgment of the trial court, because the act of the 27th Legislature above referred to as construed and enforced by this court, impairs the ation of the valid and subsisting contract between the State of s and the owners of the Santa Rosa de Arriba, the El Tule and an Antonio del Encinal, under the judgments of 1872 and 1873 he surveys thereunder.

9. The court erred in affirming the judgment herein, because ct of the 27th Legislature above referred to, as construed and ced against this appellant by this court is void, contrary to in violation of the Constitution of the United States in that it ves appellant of his property without due process of law, and out compensation.

0. The court erred in affirming the judgment in that the said of the 27th Legislature above referred to, as construed and ced by this court against this appellant is in violation of and ary to the provisions of the Constitution of the United States, of the State of Texas, in that it denies to this appellant the protection of the laws of the land."

the original opinion herein we construed the section of the f the Legislature referred to by appellant as authorizing the to bring suits to determine the exact location and boundaries nds held or claimed under titles emanating from the Spanish exican governments where the evidence on file in the land office not sufficiently identify the land claimed. And also to bring to recover from the person or persons in possession thereof, or ing title thereto, lands which are held or claimed under title ating from the Spanish or Mexican governments, where no evidence of such grants are to be found in the records or among les of the general land office, and we held that there was suffi- evidence adduced upon the trial below to support the finding e court that the evidence on file in the general land office does ufficiently identify the land claimed by appellant. Hence this suit, when considered in reference to the facts proven, was properly brought for the purpose of identifying the land claimed by appellant.

e also held in the original opinion that the evidence was suffi- to support the finding of the court that the tract of land claimed e appellant embraced more land than the grant under which aimed embraced as originally surveyed, and which was con- d by the Act of 1852, and therefore, the suit, in so far as it ntended to recover for the State such excess, could be main- d under said law.

is court did not construe said section of the act of the 27th lature as in any manner impairing the obligation or contract e State, as imposed upon it by the confirmatory act of 1852, n the contrary, upheld and sustained such obligation by hold- in effect, that the State, by virtue of said act, had relinquished

to appellant's grantors the full quantity of land granted to them by the Spanish or Mexican governments. The Act of 1852 did not impose upon the State the obligation to relinquish title to land not embraced in the original grant and survey, when the boundaries of such original survey can be traced and identified, although a resurvey made under said Act of 1852, not accepted by the State, embraces other land.

Appellant's motion for rehearing is overruled.

(Signed) EIDSON,
Associate Justice.

Filed March 21, 1906.

Endorsed:) With App. No. 5058. No. 3639. D. Sullivan *et al.*, Appellants, *vs.* State of Texas, Appellee. Appeal from Travis County. Opinion on Motion for Rehearing. Motion Overruled. Eidson, Associate Justice. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 21, 1906, R. H. Connerly, Clerk. Filed in Supreme Court Apr. 23, 1906, F. T. Connerly, Clerk.

281 *Proceedings in Supreme Court of Texas.*

In the Supreme Court of the State of Texas.

No. —.

D. SULLIVAN, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

Petition for Writ of Error.

To the Honorable Judges of the Supreme Court:

Your petitioner, D. Sullivan, complaining of the State of Texas, would respectfully represent that on the 24th day of September, 1902, the defendant in error, acting through its Attorney General, brought an action in the District Court of Travis County, Texas, against D. R. Fant to recover some portion (undefined and undescribed in the petition) of a tract of land situated in Hidalgo County, Texas, and containing 55,500 acres of land. Plaintiff alleged in its petition that the defendant was in possession of the entire 55,500 acres of land, which is, in said pleading, particularly described by metes and bounds, that the defendant owned six and one-half leagues thereof, and that the plaintiff owned and was entitled to recover the remainder. Neither the six and one half leagues admitted to be owned by the defendant, nor the portion of the said 55,500 acres sought to be recovered by the State were attempted to be described in the petition. (Trans. pp. 1 to 4). The defendant D. R. Fant, purchased the land in 1882, and in 1893, nearly ten years before the filing of this suit, gave a mortgage thereon to D. Sullivan. (Trans. p. 177.) On April 5th, 1904, *to* D. Sullivan, the plaintiff in error,

acquired all of the right, title and interest of the defendant D. R. Fant in and to the land in controversy, and, on May 5th,
282 1905, the plaintiff in error, D. Sullivan, applied for and obtained leave to intervene in said cause as a party defendant. The two defendants, D. R. Fant and D. Sullivan, answered by a general demurrer and a plea of not guilty. (Trans. pp. 5, 6 and 7) A trial of the case was had in the District Court of Travis County, Texas, on the 4th day of November, 1904 and resulted in a judgment in favor of the State for several tracts of land containing, in the aggregate, 13085.66 acres of land. The defendant, D. R. Fant, purchased the land in controversy from Hale and Parker, who as far back as 1859, were occupying it as a ranch. (See Blucher's Map p. 63). All of the land recovered by the State has been under fence and occupied by the defendants and their predecessors in title since early in the 80's. (Trans. p. 56.)

D. Sullivan appealed from the judgment of the District Court to the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas, and in that Court the judgment of the District Court was affirmed on the 6th day of December, 1905. Plaintiff in error filed a motion for rehearing in the said Court of Civil Appeals on the 11th day of December, 1905, which said motion was overruled by the court on the 21st day of March, 1906.

That in the judgment and proceedings had in the District Court and in the said Court of Civil Appeals, certain errors were commit-ed to the prejudice of your petitioner, as hereinafter set out.

First Assignment of Error.

The Court of Civil Appeals erred in holding that "this was an action brought by the Attorney General in behalf of the State of Texas to determine the exact location and boundaries of a grant emanating from the Mexican Government, under which appellant claimed title to the land in controversy, and to recover the quantity of land — the tract claimed by appellant in excess of the quantity embraced within the exact boundaries of the original grant."

Remarks.

See statement of the allegations contained in the plaintiff's petition as contained in the original opinion of the Court of Civil Appeals.

283 It will appear from a reading of the allegations contained in plaintiff's petition, as the same are set out in -he opinion of the Court of Civil Appeals, that this is a straight suit in trespass to try title.

Plaintiff alleges that it was in January, 1899, and still is the owner in fee of the entire 55,500 acres of land described in its petition. That the plaintiff was in possession of the said land and is now entitled to the possession of the same. That on the first day of January, 1901, the defendant dispossessed plaintiff, and now occupies and claims the land adversely. That the rental value of

the land is five cents per acre per annum. That defendant claims title to the land under the Pedro de la Garza grant, made by the Mexican or Spanish Governments. That the said grant was confirmed by an Act of the Legislature of the State of Texas of date February 10th, 1852, and that under the said Act of confirmation the grantee was required to have the land surveyed by the District or County Surveyor, and the field notes returned to the General Land Office. That under the said grant the defendant has taken possession of a great deal more land than the six and one-half leagues, and that neither the defendant nor any one else has ever segregated from the public domain the amount of land legally held by virtue of the aforesaid grant.

Upon these allegations the defendant in error prayed judgment for the recovery of all of said land in excess of six and one-half leagues, with a writ of possession, damages for the rent and value, use, occupation, etc.

These allegations make this action distinctively and purely an action of trespass to try title.

There was no allegation that there was any uncertainty as to the boundaries of the original grant, as made by the Mexican Government, nor that there existed any necessity for fixing these boundaries. There was no prayer that the boundaries be fixed. There was no allegation that any part of the -and described in plaintiff's petition was not included within the bounds of the original
284 grant, as made by the Mexican Government. The petition admits expressly that there was a grant by the Spanish or Mexican Governments for the amount of six and one-half leagues, which was confirmed for that amount and no more.

The wrong complained of was that the defendant had taken possession of more than six and one-half leagues, and the plaintiff sought and expressly prayed to recover the excess over the six and one-half leagues on the distinct ground that it belonged to the State, and that the defendant was unlawfully in possession of it.

In order to have made this a suit to determine the exact boundaries of the original Mexican grant the State should have alleged that there was some uncertainty about these boundaries, and hence some necessity for the court to inquire into and determine their exact location.

That this is a suit in trespass to try title, and not one to determine the exact boundaries of the original Mexican grant must be held not only because of the allegations in the petition, but also because there is no law of this State authorizing the Attorney General to bring a suit of the character that the court holds this to be. The only suits to determine boundaries which Section 11 of the Act of September 3rd, 1901, authorized to be brought in Travis County are those in which the evidence on file in the General Land office does not sufficiently identify the lands claimed. There is nothing in the Act which indicates an intention on the part of the Legislature to authorize the Attorney General to disturb the existing condition of things by instituting a proceeding for the purpose of determining whether the land which, according to the evidence on file

in the General Land Office, was sufficiently identified as being claimed under a Spanish or Mexican grant, was in fact, included within its bounds. The Attorney General doubtless understood just what character of suits he was authorized to bring for the State, and, so understanding brought this suit in trespass to try title to recover from the defendant land which was alleged to belong
285 to the State, and of which the defendant was unlawfully in possession.

While it is true that under certain rulings of the Court below, which we will endeavor to show were clearly erroneous, the issue as to the true location of the boundary of the Grant emanating from the Mexican Government was tried and decided by the Court, still there was nothing in the pleadings intimating that the suit was brought for that purpose. Indeed it was well known to the Attorney General and was an undisputed fact proven upon the trial that the defendant claimed title to the entire land described in the plaintiff's petition under the Act of Confirmation of Feb. 10th, 1852, and the survey by the Official Surveyor, acting under the provisions of said Act of Confirmation, of the precise land described in plaintiff's petition. The real purpose of the State's suit both as made by the pleadings and proof, was as will be sufficiently shown hereafter, to attack and destroy the title claimed by the defendant under the said Act of Confirmation and the Survey thereunder, and it was therefore clearly a suit in trespass to try title.

The Court of Civil Appeals therefore erred in holding that this was a suit brought to determine the exact boundaries of the original Spanish grant.

Second Assignment of Error.

The Court of Civil Appeals erred in overruling and in not sustaining plaintiff in error's first assignment of error, which reads as follows: "The court erred in overruling the general demurrer to plaintiff's petition."

First Proposition Under Second Assignment of Error.

A general demurrer should be sustained to a petition in trespass to try title which does not give a sufficient description of the premises sought to be recovered.

See state- of allegations contained in plaintiff's petition in the opinion of the Court of Civil Appeals.

Plaintiff in Error's general demurrer was presented and overruled. (Trans. pp. 6, 7 and 8.)

286 *Authorities.*

Haley *vs.* Fontaine, 33 S. W. Rep., p. 260.

Remarks.

I- will appear from a reading of the plaintiff's petition that the State, in the first part thereof, alleges that it was "the owner, in fee,"

of a certain tract of land describ*ing* in particular by metes and bounds, containing 55,500 acres of land, and that from this land it had been dispossessed by the defendant. The petition contained in the second paragraph the somewhat inconsistent allegation and admission that out of this 55,500 acres of land the defendant owned six and one-half leagues. The prayer of petition was that the state recover the excess in the 55,500 acres over and above the six and one-half leagues. The large tract of 55,500 acres is specifically described, as above stated. There is in the petition no description whatever of the six and one-half leagues which the plaintiff admits the defendant owned, nor is there any pretense of a description of the portions or portions of the 55,500 acres which the plaintiff asserts title to and seeks to recover.

There is, of course, no question but that the State did not sue for or claim an undivided interest in the 55,500 acres of land, but it is, on the other hand, clear that it was seeking to recover a specific portion or portions thereof, without describing the same. In the case of Haley *vs.* Fontaine, above cited, the plaintiff claimed 327 acres out of a 640 acre tract. Judge Williams, writing the opinion of the court in that case, said of the plaintiff's petition:

"As is seen from the description given in his *his* petition he identifies no land. He does not sue for an undivided interest, as the court below, in its judgment, seems to have assumed, and does not describe the land which he claims that it may be identified and possession delivered. His supplemental petition does not undertake to cure this defect, but merely refers to the deed of trust alleged to be on file to show that both parties are claiming the land, without further identifying it. The general demurrer should have been sustained."

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In *his* case the State assails the title to a large tract of land which had been occupied and used by and recognized as the property of the plaintiff in error and his vendors for nearly half a century, and which had been actually under fence for about a quarter of a century.

The State opens its petition with the allegation that it owns the entire 55,500 acres, but it subsequently admits in the same pleading that there is at least six and one-half leagues of it which it does not own, but which is owned by the defendant.

The petition is absolutely silent as to what particular portion of the tract the State admits the defendant's title to, and gives the defendant no warning whatever as to what particular portion of his land will be subject of attack by the State.

Upon the trial of the case the State relied upon the testimony of a number — old negro and Mexican witnesses, of whose existence the defendant had no knowledge, nor any warning whatever of the nature of their testimony. Through the testimony of these witnesses, the State attempted to (and in the Court below and Court of Civil Appeals had succeeded) in playing checkers with the defendant's surveys so as to recover two tracts of land lying on the Eastern side of the 55,500 acre tract, and another on its Western side, leav-

ing the tract so disfigured that it oldest acquaintance would not recognize it. If the State in its petition had given some description of the portion or portion- of the 55,500 acre tract which it sought to recover, the defendants might have anticipated, to some extent, at least, the nature of the attack which would be made upon their title. As it was they had no means of knowing where the State would contend that the six and one-half leagues, which it admitted they owned, was located.

It is respectfully submitted that this is peculiarly a case in which the well established rule of pleading laid down in Haley *vs.*
288 Fontaine, *supra,* should find its proper application.

Second Proposition Under Second Assignment of Error.

In trespass to try title where plaintiff seeks to recover a specific portion of a larger tract, the petition is fatally defective on general demurrer if it fails to describe, so as to identify the same, the particular portion, or portions of the larger tract claimed.

See statement and authorities under preceeding proposition.

Third Proposition Under Second Assignment of Error.

Where a State appears as a party to a suit she voluntarily casts off the robes of her sovereignty, and appears before the bar of a court of her own creation in the same attitude as an individual litigant, and is governed by the same rules of pleading and practice.

Authorities.

State *vs.* Coudt, Vol. 11, T. C. R. 932.
Cameron *vs.* State, 67 S. W. Rep. 360.

Remarks.

There seems to be no good reason why the State, when it attacks the title to land, should not be required to abide by and conform to the same well established rules of pleading which it through its courts, prescribes for individual litigants. A general demurrer to such a petition as this—filed by any other plaintiff than the State of Texas,—would have been sustained with the result that the plaintiff would have been required to plead over, and identify the land which was sought to be recovered. This the plaintiff should have been required to do in this case, and it is respectfully submitted that the court below and the Court of Civil Appeals erred in not so holding.

Third Assignment of Error.

The Court of Civil Appeals erred in holding in its original opinion that "the judgment of the court below involves a finding that
289 the evidence on file in the General Land Office does not sufficiently identify the land claimed by appellant, and we

think its finding in this respect is supported by the evidence,' because there was absolutely no evidence introduced upon the trial which supported or tended to support such a finding, but it was positively proven by both the plaintiff and defendant that the evidence on file in the General Land Office not only sufficiently, but with absolute accuracy, identified the land claimed under the confirmed grant in question.

Fourth Assignment of Error.

The Court of Civil Appeals erred in holding in its opinion handed down on the motion for rehearing that "there was sufficient evidence adduced on the trial to support the finding of the Court that the evidence on file in the General Land Office does not sufficiently identify the lands claimed by the appellant, hence this suit, when considered in reference to the facts proven, was properly brought for the purpose of identifying the land claimed by the appellant," because there was absolutely no evidence introduced upon the trial which supported or tended to support such a finding but it was positively proven by both the plaintiff and defendant that the evidence on trial in the General Land Office not only sufficiently, but with absolute accuracy, identified the lands claimed under the confirmed grant in question.

Statement.

See statement of plaintiff's pleadings contained in the opinion on the original hearing, from which it appears that the plaintiff alleged and admitted (1) that the grant to Pedro de la Garza was made by the Spanish or Mexican government, (2) that the said grant was confirmed by the Act of February 10th, 1852, and (3) that the said Act required the owners of the grant to have same surveyed, and the field notes thereof returned to the General Land Office, upon which the Commissioner of the General Land Office should issue patents, etc.

290 We here desire to call the attention of the court to the allegations contained in the plaintiff's petition, omitted from the opinion of the Court of Civil Appeals, and which immediately follows the allegations above referred to, as follows:—

"Plaintiff further alleges that neither the grantee of said six and one-half leagues of land, nor his heirs or assigns, have had the land properly surveyed, and proper field notes returned to the General Land Office which sufficiently identifies the land claimed by virtue of the said grant to enable it to be determined what land is claimed by virtue of the same."

The Court of Civil Appeals finds, both in its original opinion and that handed down on the motion for rehearing, that there is evidence in the record to sustain this allegation.

We will now refer to the record and show conclusively that there is not only no evidence to sustain this finding, but that the evidence introduced by the State itself, as well as that introduced by the defendant—and as to which there is no contradiction—proves the exact contrary.

"Both the state and the defendant introduced the field notes of a survey of the above grant made by Felix A. Von Blucher, deputy district surveyor of Cameron district, on May 24, 25, 26, 27, 28, 29, 1859, filed in the General Land Office, August 5th, 1869, together with map and sketch accompanying the same, which are as follows." (Trans. p. 62.)

The field notes which are copied in the transcript, page 62 a, b and c, show upon their face, that they were made under the Act of confirmation for Wm. G. Hale, and F. J. Parker the then owner of the grant. The map accompanying these field notes depicts the grant just as it was delineated on the map made by Felix A. Von Blucher, Deputy Surveyor, of date January 11th, 1869, the original of this map being sent up with the record, and marked "Map F," and just as it is also delineated on a certified copy of the official map of the General Land Office of date July 13th, 1875,
291 sent up with the record and marked "Map E."

The Court of Civil Appeals intimates that the delineation on the Map of the General Land Office may not have been intended to represent the Blucher survey. It will require no more than a glance at the maps to convince this court to the contrary of this intimation. This is expressly admitted by the Attorney General on his brief, on page 35 thereof, in these words: "The map is certified by Groos, Land Commissioner, to be a true copy of the original on file herein, and filed in the General Land Office in 1875, and as delineated on the map the Santa Rosa de Arriba appears to be an exact reproduction of the map made by Blucher accompanying his field notes, as shown on page 63 of the record."

The 55,500 acre tract mentioned in the plaintiff's petition is described by metes and bounds by copying, verbatim, the field notes contained, in the Blucher survey, as the same were filed in the General Land Office in 1869. There is absolutely no conflict in the evidence as to where any of the lines of this grant, as established by Blucher in his resurvey, are situated. Every witness who testified on the subject agrees upon that point, and all state that the lines are easily identified upon the ground. The Santa Rosa de Arriba is bounded on the North by the Olmos creek. The surveys abutting upon its Eastern, Southern and Western boundary lines, for their entire distance, were patented many years ago by the State of Texas and in the patents on every side the lines of the Santa Rosa de Arriba are called for. The Attorney General on page 35 of his brief says:—"The surveys on the railroad sections on the East call for the East line of the Santa Rosa de Arriba, referring, quite evidently to the East line as resurveyed by Blucher, and the same may be said with regard to the calls in the patent to the Encinal and the Rule in the call for the Western line of the Santa Rosa de Arriba.

292 *Authorities.*

Act of February 10th, 1852.
Section 11 of Act of September 3, 1901.
First Called Session 27th Legislature.
Section 8, Art. 14, Constitution of 1875.

It will readily appear that the Attorney General clearly recognizes the fact that Section 11 of the Act of 1901 only authorizes suits to be instituted thereunder in two classes of cases, which are (1) where no valid evidences are to be found in the General Land Office of Spanish and Mexican grants under which the claimants thereunder are holding land. The State expressly admits in its petition that the Santa Rosa de Arriba grant is valid and that it was confirmed by the Legislature of the State of Texas, hence it is clear that this case does not fall within the first class of cases in contemplation of the Legislature at the time of the passage of the Act of 1901. And (2) such suits as may be necessary to determine the exact location and boundaries of such lands where -he evidence on file in the General Land Office does not sufficiently identify the land claimed.

It was contended by the State and expressly held by the Court of Civil Appeals that this case comes within the last above mentioned class, and, if maintainable at all, it must be as one belonging to that class.

The finding therefore, of the Court of Civil Appeals that the judgment rendered by the Court below in favor of the State, involved a finding (which, it says, is supported by the evidence) that the evidence on file in the General Land Office does not sufficiently identify the land claimed, is of vast importance and goes to the very vitals of this case.

It will be conclusively presumed that the legislature when it passed the Act of 1901 had in view all of the previous legislation bearing upon the same subject, and, particularly, the Act of February 10th, 1852, under which this particular grant was
293 confirmed as that Act was, by far, the most important and comprehensive legislation ever enacted in this State upon this very important subject. The Act of confirmation leaves no doubt as to what kind of evidence the legislature intended should be placed on file in the Land Office to identify the lands claimed by the grantees under the confirmed grants. The law expressly provides that this evidence shall consist of the field notes of the re-survey of the grant by the District or County Surveyor. This is, indeed, the only evidence which, under any law, could be filed in the Land Office to identify the land claimed. If, then, the court below and the Court of Civil Appeals found that the evidence on file in the General Land Office does not sufficiently identify the land claimed by plaintiff in error, it must have found that the field notes of the re-survey of the grant by the District or County Surveyor were not filed as the Act of confirmation required. If, as is held by the Court of Civil Appeals, the judgment of the court below in favor of the State involves a finding that the evidence on file in the General Land Office does not sufficiently identify the land claimed under this confirmed grant, then such a finding is without one syllable of support in the evidence, and is in direct conflict with the positive and uncontradicted evidence introduced upon the trial of case by both parties to the litigation. It is probable that, in stating that the judgment of the court below involves such a finding the

Court of Civil Appeals only meant to hold that, without such a finding, this suit could not be maintained by the State under the Act of 1901, as it clearly appears from the two opinions handed down by the Honorable Court of Civil Appeals that the latter considered this question as of fundamental importance in the case.

It will, as stated, clearly appear from the foregoing statement that both the State and the defendant introduced in evidence the field notes of the survey of the grant made by Felix A. Von Blucher, Deputy District Surveyor, in 1859, and which were filed in the Land Office in 1869 with a sketch or map accompanying the
294 same. That the survey as thus made by Blucher, was delineated upon the maps in the General Land Office as early as 1875, and that patents issued to surveys abutting on three sides of the grant have called for it as surveyed by Blucher.

There is, therefore, on file in the General Land Office abundant and conclusive evidence positively and accurately identifying the land claimed under the grant by appellant. The state itself made this proof. It, however, after having positively proven this important fact, went further and attempted to prove that the Blucher survey was incorrect, that is to say that it did not accurately conform to the boundaries of the grant, as originally made by -he Mexican Government. The Court of Civil Appeals finds that the evidence upon the issue as to whether the Blucher survey did conform or not to the boundaries of the original Spanish grant was conflicting, and that, for this reason, it would not disturb the finding of the court below on this issue of fact.

The ruling of -he Court below on this branch of the case must therefore, in view of the undisputed evidence introduced on the trial have been that the Blucher survey of the grant was incorrect because it did not conform to the original survey under the Mexican grant, and that his survey and the field notes thereof should be disregarded for that reason. The Act under which this suit was brought does not, in express terms, or by any possible implication, authorize the institution or maint*ai*nance of a suit to correct the re-survey under the Act of confirmation. It does however, plainly express the contrary intention. It expressly says that when there is no question about the validity of the grant suit shall only be brought when the evidence on file in the General Land Office does not identify the land claimed by the grantee. This provision, read in the light of those of the Act of February 10th, 1852, means that no suit should be authorized against the owners of confirmed grants in cases where resurveys under the Act of confirmation had be- made, and the field notes returned to the General Land Office.
295 There is, it is most earnestly submitted, absolutely nothing in any of the legislation of this State upon the subject indicating that it was *the ever* purpose of the Legislature to disturb the titles of the owners of these confirmed grants to any of the land embraced within any of the re-surveys as made by the officer authorized so to do by the Act of confirmation. Indeed the entire legislation of the State, from its earliest history, down to and including the Act under which this suit was brought, bespeaks a well

defined and settled policy to the contrary. Some of the laws bearing upon these subject confirm specific grants, and others authorize suits to establish the existence thereof, but all provide for a survey, thus leaving no doubt as to the legislative desire to have all questions of title and boundary settled forever. This is apparent from the entire legislative history upon this subject, and is emphasized by the provisions of Section 8, Art. 14 of the present Constitution of the State of Texas, which gives expression to this well defined policy and at the same time makes prominent the importance which the State attaches to the re-surveys, and its anxiety to have the same made and the field notes thereof returned to the General Land Office.

The Section of the Constitution above referred to provides that persons residing between the Nueces and the Rio Grande Rivers and owning grants to lands which emanated from Spain or Mexico, which grants have been recognized and validated by the State by the Acts of the Legislature approved February 10th, 1852, August 15th, 1870, and other Acts, and who have been prevented from complying with the provisions of said Acts by the unsettled condition of the country, shall be allowed until the first day of January, 1880, to cause surveys thereof to be made and the field notes returned to the General Land Office.

It is again respectfully and earnestly submitted that nowhere is there the slightest intimation of a legislative intent to authorize suits on behalf of the State to inquire into the correctness
296 of the surveys made under the Acts of confirmation, whereby the titles to lands which have for nearly 50 years, been recognized as private property, and which have been for nearly a quarter of a century under fence could be disturbed. It may be justly said of the great State of Texas what was said of the State of Massachusetts, in the case of Commonwealth *vs.* Pejepscut 10 Mass. 155, that in directing suits to be brought by the Attorney General in the carefully guarded classes of cases specified in the Act of 1901, "Other motives are avowed than a disposition on the part of the legislature" to undo anything that had already been done under the State's authority.

Since the undisputed evidence does, as we have conclusively shown, establish the fact that the survey of this particular grant was made by the officers designated by law, and the field notes thereof duly returned to the General Land Office, and the grant, as so surveyed, delineated upon the maps of that General Land Office, the Court of Civil Appeals erred in the findings complained of in the assignments of error now under consideration.

Fifth Assignment of Error.

The court of Civil Appeals erred in overruling and in not sustaining plaintiff in error's thirteenth assignment of error (14th in Trans.) which is as follows:—"The court erred in not rendering judgment for this appellant for tracts Nos. 1 and 2, because the evidence introduced on the trial of this case was wholly insufficient to entitle the State of Texas to recover said tracts Nos. 1 and 2, or any part thereof."

Sixth Assignment of Error.

The Court of Civil Appeals erred in overruling and in not sustaining plaintiff in error's fourteenth assignment of error (12th in Transcript), which is as follows:—"The court erred in not rendering judgment for this appellant for all the lands included in tracts Nos. 1 and 2, because the evidence introduced upon the trial of this cause shows that all of said lands are included within
297 and covered by the Santa Rosa de Arriba, as its Eastern boundary line was defined and established by the official surveyor in accordance with and under the provisions of the Act of the Legislature of the State of Texas, passed on February 10th, 1852, and as the said eastern boundary line has been recognized and acquiesced in by the State of Texas, and all of its officers, ever since the same was so established and defined in 1859 by the official surveyor in accordance with the provisions of this Act."

Seventh Assignment of Error.

The Court of Civil Appeals erred in overruling and in not sustaining plaintiff in error's twenty-first assignment of error (22nd A in Transcript), which is as follows:—"The court erred in rendering judgment for the plaintiff for any portion of tracts Nos. 1, 2 and 3, mentioned and described in the judgment herein rendered, because the evidence introduced upon the trial of this cause shows that all of the land covered and included in all of said tracts Nos. 1, 2 and 3 was included within the boundaries of the Santa Rosa de Arriba grant, as the same was re-surveyed by F. A. Von Blucher in 1859, under and in accordance with the terms and provisions of an Act of the Legislature of the State of Texas, passed Feb. 10th, 1852, the said F. A. Von Blucher then being the official surveyor authorized under said Act to make said survey and that the field notes of said survey were duly returned to the General Land Office under and in accordance with the provisions of said Act of the Legislature.

Reference is respectfully made to statements under third and fourth assignments of error which we beg the court to consider in connection with the undisputed fact that the re-survey of the Santa Rosa de Arriba by Blucher, 1859, included all of tracts Nos. 1, 2 and 3, recovered by the State.

298 *Second Proposition Under Fifth, Sixth, and Seventh Assignments of Error.*

In an action of trespass to try title where the plaintiff alleges specifically the grounds upon which the right of recovery is based, it must prove the case as alleged.

Remarks.

It has already been shown that the State in its pleadings alleged the confirmation of this grant by a legislative Act which required

its survey by the District or County Surveyor, and the return of *of* the field notes of the survey to the General Land Office.

It is alleged, specifically, as the basis of its right to recover, the failure of the grantee to comply with this requirement.

The undisputed proof shows the contrary.

The Plaintiff, therefore, failed to make out its case, as alleged, and judgment should have been rendered against it for that reason.

The suit which the State instituted, and which it attempted to make by its pleadings was one in which the plaintiff in error was called to an account for not having complied with the requirement of the Act of confirmation by having the survey made by the official surveyor.

The undisputed proof showing that this requirement had been complied with, necessarily constituted a complete defense to the suit as brought.

The case, however, which was tried by the court below, was a wholly different one, and one which, if the State had attempted to allege in its pleadings, would have been subject to a general demurrer.

If the State had alleged that this grant was confirmed, that it was surveyed as required by the Act of confirmation by the official surveyor, the field notes thereof returned to the General Land Office, and the grant delineated upon the maps, as thus surveyed,
299 and had further alleged as the basis of its right of recovery, that the survey as made by the official surveyor was incorrect because it did not accurately conform to the boundaries of the original grant, a general demurrer to the petition would have been sustained, both because there was no law authorizing the institution of such a suit, and because it would have been held that the official survey could not be avoided, except by timely allegations of fraud upon the part of the grantee. Maxey *vs.* O'Connor, 23 Texas, 23, Smith *vs.* Hughes, 23 Texas 249, Elliott *vs.* Mitchell, 28 Texas, 111, Railway *vs.* State, 81 Texas, 602, Land Co. *vs.* State, 1 T. C. A. 621, White *vs.* Burnley, 20 How. 247, White *vs.* Blum, 79 Fed. Rep. 274 and Howard *vs.* Colquhoun, 18 Texas, 134.

The case which the court tried, but which was not made by the pleadings, was, when stripped of all legal verbiage, and boiled down to its true purpose and effect, a suit to annul and avoid the Blucher survey, and the field notes thereof, as one of the muniments in plaintiff in error's title.

The case made by the pleadings was disproved by the undisputed evidence, and the court should have rendered judgment accordingly.

Eight- Assignment of Error.

The Court of Civil Appeals erred in overruling and in not sustaining plaintiff in error's contention which is stated in the language of the opinion as follows:

"Appellants contend, under various assignments of error, that the

provisions of the act of 1852 confirming the grant under which they claim, and provide for the survey of the land embraced in said grant, constituted a valid and binding agreement upon the part of the State with the owners of said grant that they should acquire or be entitled to the land embraced in the survey made in pursuance to the provisions of said act."

and the Court of Civil Appeals erred in holding that this contention of plaintiff in error is not sound.

300 See foregoing statement showing that this grant was confirmed by name for six and one-half leagues of land by the Act of Feb. 10th, 1852, which required that the owner thereof shall have the same surveyed by the District or County Surveyor and the field notes thereof returned to the General Land Office, and further directed that the Commissioner of the General Land Office should delineate the grant as so surveyed upon the maps of the General Land Office and issue patents thereto to the grantee. See also foregoing statement showing that this grant was surveyed by Felix A. Von Blucher, Deputy District Surveyor of Cameron District, as required by the Act of Confirmation, for F. J. Parker, the then owner of the grant, and the field notes of his survey were returned to the General Land Office, and the grant as thus surveyed was delineated upon the official maps of the territory as early as 1875, and have been so delineated ever since.

The patent was never issued on this survey, but as shown in the foregoing statement patents were issued to the surveys on the East, West and South of this grant, calling for it as surveyed by Blucher and as delineated on the maps of the General Land Offie.

First Proposition Under the Eighth Assignment of Error.

In all cases where the grant of a former government is confirmed by legislative enactment which contains a provision for a survey for the purpose of ascertaining its boundaries and prescribes the instrumentalities, and the public official by whom such survey shall be made, and such survey is made by the officer designated, the act of confirmation becomes so far operative and complete as to convey the legal title to the land included within the survey.

Second Proposition Under the Eighth Assignment of Error.

In cases where the legislative enactment confirming the grant of a former government provides for a re-survey and authorizing a patent to thereafter issue on the survey, the grantee's title to

301 the particular land is perfected when the re-survey is made and the field notes returned as the law requires and the legislative grant thereupon became complete to that particular land. The patent is not necessary to perfect the title nor does it add anything to that title, it only serves as an evidence of title.

Authorities.

Langduea *vs.* Haines, 21 Wallace, 521.
Clark *vs.* Hills, 67 Texas 141.
Menard Heirs *vs.* Massey, 8 Howard, 293.
Guitard *vs.* Stoddard, 16 Howard 494.
West *vs.* Cochran, 17 Howard, 403.
Ryan *vs.* Carter 93 U. S. 78.
Morrow *vs.* Whitney, 95 U. S., 551.
U. S. *vs.* Roselius, 15 Howard, 34.
Arguello *vs.* U. S., 18 Howard 539.
Forbes *vs.* Withers, 71 Texas, 472.
Commonwealth *vs.* Pejepscut, Prop. 10 Mass. 156.
Rutherford *vs.* Grienes Heirs, 2 Wheat, 196.
Howard *vs.* Perry, 71 Texas 266.
Hamilton *vs.* Avery, 20 Texas 635.
Wright *vs.* Hawkins, 28 Texas, Supp., 408.

Contra.

Corrigan *vs.* State, 14 T. C. R., 978. (Ma-ch 8th, 1906.)
And the decision of the Court of Civil Appeals in this case.

Remarks.

The opinion of the Court of Civil Appeals in this case and in that of Corrigan *vs.* State, above cited, when read together will be found to state in the most forcible and emphatic manner the views of that learned court as to the effect of the survey and patent under the Act of Confirmation of old Mexican Grants. In this case it is distinctly and expressly held that the owners of the confirmed
302 grants could not by complying with the Acts of Confirmation acquire title to a single acre of land, which was not included within the boundaries of the original grants. In the case of Corigan *vs.* State, it is held in effect by the same court that the owner of the Confirmed Grant can, at will, disregard the survey under the Act of Confirmation, and the patent issued thereon, and claim title to any land included within the boundaries of the original grant even though it was excluded from the re-survey under the Act of Confirmation, and the patents issued thereon. The views of the Court of Civil Appeals on this question are plainly reflected by the following quotations from its opinion in this case.

"The act of confirmation does not make the surveyor the agent of the State, so as to bind it by his act in surveying the land. According to the common acceptation of the language employed in said act, he is made the agent of the claimant of the land, as the duty to have the survey made is imposed upon such claimant. In our opinion, the contract or agreement embraced in the act of confirmation upon the part of the State only extends to a relinquishment of the land embraced in the original grant."

In the case of Corrigan *vs.* State, the Court says:—

"These people situated as Diego Ybojosa was, within the territory, where the titles were directed to be investigated by the commission appointed, could with safety, before that body, relying upon the fact that if their grants were valid and legal that they would receive the recognition and respect due them under the laws of the former government, which were guaranteed by the treaty of Guadalupe Hidalgo, and that if when contracted for in a different family thus recognized as being valid the recognition would extend to every acre of land included within the original boundaries. The Legislature in the act of 1852, was actuated by this spirit, for they
expressly stated that the patent should not issue for a less
303 amount than the original grant. That was a part of the
scheme of confirmation and they never expected that, and it was never intended to confer upon a surveyor, who should exercise his functions under that act, power to locate the land just as he saw fit or desired to do, and thereby reduce the quantity to less than what could be lawfully ascertained to be within the limits of the original grant."

and again:—

"This being true the Legislature, when they released the right of the State, released it to the boundaries of the original grant, and the surveyor appointed under the law had no authority to disregard this legislature purpose and intent, and to make a survey that would materially cut down and reduce the quantity of land contained in the original grant."

It is proper to here state that it is true that the Court of Civil Appeals held in the Corrigan Case that there was no evidence in the record to support the finding of the Court below that the owners of the grant in question, in that case procured the survey to be made under the Act of Confirmation or patent to be issued. There is nothing in the report of the case in the Texas Court Reporter to explain how the survey came to be made, unless it was at the request of the owner of the grant. The Act of 1852 required that the Official Surveyor should act at the request of the owners to whom he was to look for compensation for his services. The field notes for these surveys usually recited for whom they were made. This recitation is contained in the field notes of every survey introduced in evidence in the case at bar, and there were many of them. Whether this is true of the field notes of the survey in the Corrigan case does not definitely appear from the report of the case. There is however, to be found in the opinion language which indicates that the Court of Civil Appeals was of the opinion that the mere fact that the owner of the grant called upon
the official surveyor to make the survey and return the field
304 note- to the General Land Office, would not be sufficient to
bind the grantee, but that he would still be at liberty to repudiate the survey, if it did not suit him, and claim to the boundaries of the original grant. This view of the Court is indicated by the following quotation from its opinion:—

"But however having done so, the claimants or those asserting

the right and title to the original grant evidently it could be assumed, declined to accept and be bound by the work of that surveyor or to receive and accept a patent based thereon and subsequently issued, but doubtless preferred to stand upon the right and title conferred by the original grant. After the field notes were returned to the Land Officer and there filed by the official surveyor, who was charged with the duty of making the survey under the act of February 10th, 1852, the Commissioner of the Land Office doubtless regard- it as his duty to issue a patent, probably not having any knowledge of the fact that the original grant had been materially reduced in quantity by the new survey."

It must be admitted that by reason of the fact that the Court of Civil Appeals finds in the Corrigan case that there was no evidence showing that the survey was caused to be made or the patents to be issued by the owners of the grant the case is not a direct holding in conflict with the cases above cited. It is however plainly apparent from the expressed holding of the court in this case and from the discussion of this question by the learned court as contained in their opinion in this case and the Corrigan case, that the court is of the opinion that the *the* Act of Confirmation and the proceedings thereunder have failed of their manafest and only purpose, which was to absolutely settle the title to the land involved. The conflict between the views of the Court of Civil Appeals as expressed in this case and the long line of cases of which some are above cited will be perfectly apparent by giving to the cases cited and the opinions of the Court of Civil Appeals in this and the Corrigan case, the careful consideration which the importance of the question involved demand-. It is earnestly hoped that the importance and possible far-reaching effect of the final decision of this question will justify a somewhat extended discussion here, and a review of some of the leading cases bearing upon the question.

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It is of course, well known to this court that the substance, and to a considerable extent, the verbiage of the acts of confirmation of the Spanish and Mexican grants passed by the Legislature of the State of Texas were taken from similar Acts passed by the Congress of the United States while the Nation was in its infancy. It is well known that the two Legislative bodies had precisely the same purpose in view in enacting this character of legislation. They were, (1) to recognize, protect, and confirm property rights created by and acquired under the former sovereigns, and (2) to ascertain and to definitely and finally determine what lands had been granted by the former sovereigns. Some of the early Acts of Congress upon this question were confined to a confirmation of the grants and contained no provision for a survey and patent under the Act of confirmation. These were conclusive as to the title but left the question as to the boundaries of the grants undetermined and indeterminable, except through the ordinary course of delayed and prolonged litigation. The confirmation of the grants without providing any means of ascertaining their boundaries was of great value to the granters, as it put the question of their title to some land forever at rest. Congress however, at an early date realized that it would be

of vast benefit to the claimants to provide some method by which the boundaries of the respective grants could be speedily and conclusively determined. It also realized that the Government was equally interested with the claimants in having this done, both because it would tend to prevent litigation over the boundaries, and encourage the settlement of the lands, but also, because it would thus be definitely ascertained what lands were still unappro-
306 priated. It was for this reason that all of the Acts of confirmation passed by Congress, except the very earliest, contained some provision authorizing or requiring a survey and patent of the confirmed lands. In the various Acts the provisions on this subject are couched in somewhat different language, some of them making it the duty of the surveyor general to cause the land to be surveyed and plotted, recorded in the various registrar's offices, and reported to the General Land Office. Others made it the duty of the claimant to have the land surveyed. Some of the Acts, as construed by the courts, required a compliance with their provisions in this respect by the claimant as a condition precedent to their being entitled to the benefits of the Act of confirmation. Some of them simply imposed the duty upon the claimant, but did not make it a condition to the Act of confirmation nor prescribe any penalty or forfeiture for a failure to comply therewith. These variances in the provisions of the Acts lead to a marked difference in decision as to the effect of a failure to have the survey made. It can, however, be stated, that without a single exception, it has been held in every case, wherein the question was either directly or incidentally involved that where the survey was made by the official surveyor under any of these acts it was binding and conclusive against both the Government and the claimant. This statement will be abundantly verified by an examination of the authorities.

In order to determine what construction should be placed upon the confirmatory acts of the Legislature of the State of Texas, and to determine the purpose, meaning and intent of such acts, it is natural, and indeed, indispensable, that reference should be had to the construction which has been placed by the highest court of the land upon the Acts of Congress from which those of the Legislature are substantially copied.

It is most respectfully submitted that the court of Civil Appeals has fallen into an error as to the effect of the decisions of the
307 Supreme Court of the United States bearing upon this question, and we beg to be permitted to trespass upon the time of the court to the extent of reviewing the cases in point.

It is proper to say at the outset, that it has been uniformly held that it was a Legislative function, to prescribe the manner in which, and the instrumentalities by which boundaries in which the public have any interest shall be determined.

In the case of West *vs.* Cockran, 17 Howard, 403-416, the Supreme Court of the United States, in construing the seventh section of the Act of Congress of 1807, which declared that the confirmed grant should be surveyed under the direction of the Surveyor General and that he should transmit general and particular plats of the

tracts thus surveyed to the proper register or recorder and also transmit copies to the secretary of the treasury, and that certificate and plat being filed with the register or recorder, he was thereupon required to issue a patent certificate in favor of the claimant, which being transmitted to the secretary of the treasury, entitled the party to a patent in like manner as patents were issued on lands sold by the United States, says:—

"It was competent for congress to take up these titles or rights, and act on them either by legislating directly that each claimant should be confirmed, and have a perfect title to his actual possession lawfully acquired under France or Spain, without ascertaining, in the act of confirmation, or by any special means provided therein the bounds of claims confirmed. But it was also competent for congress to provide, that before a title should be given to any possessor, the exact limits of his possession, and the title which the United States was to give, should be defined, and that this should be done by such agencies and in such manner, as might be fixed by congress. This is in entire accordance with the provisions of the treaty, which guarantees to the inhabitants the rights of property secured to them,
but it was not intended to provide for the particular modes
308 and instrumentalities by which such rights should be ascertained and enforced—these being left to the nation to whose powers they were confided so that the question is what has congress deemed expedient? Now the policy which is so obvious, and which has been acted on — the United States ever since they began to exercise power over the public lands, namely, to give defined limits to grants, may well be supposed to have actuated congress in 1807. The provisions of that act clearly show that although congress intended that the commissioners should adjudge the existence of good titles to lands held under France and Spanish possessors, yet they did not intend that a final legal title, as against the United States, should be made to vague grants, until their bounds had been ascertained by the means there designated, and the particular tract defined by survey."

Upon the same well established principle rests the decision of the Supreme Court of this State in the case of Jones *vs.* Powers, 65 Texas, p. 213, in which the court construed the Act of the Legislature of the State of Texas prescribing the manner in which County boundaries shall be established, and in which the court says:—

"Where a county line has once been run, marked upon the ground and established in accordance with law, it cannot be said to be indefinite. It may be incorrect, but nevertheless, well defined. None of the statutes seem intended to give power from time to time to the County Commissioners to correct what may have been incorrect in the establishment of the county line on the ground, but the same intend to give a means by which the line or lines may be made definite or certain and when so rendered in compliance with the statute, whether correctly run and marked or not, the statutory declaration that the line so run and marked shall thereafter be regarded as the true boundary line between the counties, ought to be given full effect and held as a prohibition to any further acts looking to the

establishment of any other lines. It rests with the Legislature
309 to define the boundaries of counties, and to provide the means whereby their true localities on the ground may be determined and when these methods have been pursued, and the line or lines ascertained as required by law to be the line or lines so established, should be construed the one, whether mathematically so or not. It is of more importance that the lines be certain, and well defined than that they should be absolutely correct. If a different rule were adopted, untold injury and confusion might result."

Many more cases to the same effect might be cited.

The next and only remaining question to be examined is what effect is to be given to establishment of a boundary in which the public has an interest, in the manner and through the instrumentalities prescribed by the Legislative authority. This question is equally well settled, and upon it there is no conflict of decision.

In Menard's Heirs *vs.* —— 8 How. 293, by the Act of Congress of April 29, 1816, it was provided that a surveyor should be appointed of the public lands for the Territories of Illinois and Missouri, whose duty it should be to cause so much lands in the said Territory as the president should direct, to be surveyed and divided as were the public lands of Southwest Iowa and the Act further declared, "It shall also be the duty of the surveyors to cause to be surveyed the lands in said Territories; the claims to which have been or which *have* after may be confirmed by any Act of Congress, which have been surveyed according to law, and he shall transmit to the registrars of the Land Office in the said Territories general and particular plots of the lands surveyed or to be surveyed, and shall also forward copies of said plots to the Commissioners of the General Land Office, and all of the plots and surveys and other documents pertaining or which did pertain, to the office of the Surveyor General under the Spanish Government, within the limits of the Territory of Missouri, and shall be delivered to the surveyor, under this Act, and any plot or survey, duly certified by such surveyor, shall be admitted
310 in evidence in any of the courts of the United States, or the Territories thereof." Under this Act a survey was made by J. C. Brown, surveyor, of the grant confirmed to Pascal L. Cerre by the Act of Congress approved July 4, 1836. The surveyor General approved the survey June 26, 1840. The court says:—

"In having the land laid off and in approving the survey the Attorney General acted under the authority of Congress, expressly confered by the Act of 1816."

and again:

"The land was directed to be surveyed according to his direction, the surveyor having regard to the last and fifth instruction with the exception of the special spot called for in the concession, which was required to be laid down and noted in some part of the survey. When it was made and the survey conveyed to the surveyor General's Office it was conclusive evidence as against the United States that the lands granted by the confirmation of Congress was the same described and bounded by the survey, unless an appeal was taken

by either party, or an opposing claimant, to the Commissioner of the General Land Office. This construction depends on the fact that the claimant and the United States were parties to the selection of the land, and were mutually bound and respectively estopped by it."

In the case of Guitard *vs.* Stoddard, 16 How., 494,—on page 592,—case of Menard's Heirs *vs.* Massey, is cited and quoted from with approval, as it was also in the case of Bryan *vs.* Forsyth 19 How., 733.

The case of Ryan *vs.* Carter, 93 U. S. 78, is cited by the Court of Civil Appeals in support of the proposition that "a contract or agreement embraced in the Act of Confirmation on the part of the State only extends to a relinquishment of the land embraced in the original grant." We confidently and most respectfully submit that a careful reading of that case by the Court will disclose that there is absolutely nothing in it which even tends to affirm the
311 proposition in support of which it is cited by the Court, nor is there in the case anything tending to deny the proposition contended for by the Appellant that the State intended to be and was bound by the re-survey under the Act of Confirmation.

In the Case of Ryan *vs.* Carter both parties to the litigation claimed under the same Spanish Grant to Auguste Dodier which was confirmed by the Act of Congress. The land so confirmed was surveyed in 1817 by the proper Surveyor of the United States and is known as the U. S. Survey No. 422, but the patent citing the confirmation and the survey did not issue until August 9th, 1872. There is in the case absolutely no question raised or decided as the conclusiveness upon both the Government and the grantee of the survey by the Government and the grantee of the survey by the Government Surveyor. The entire litigation was to determine the title between the respective litigants of a particular portion of the grant as the same was established by the Government Surveyor. In this statement of the case the Court said:—"That the property in suit is a part of a tract of land known as Survey No. 422 in the County of St. Louis. Both parties claim under Auguste Dodier to whom the land was confirmed in 1810 by Board of Commissioners created to settle the title of claims to lands in the Territory of Orleans and Louisiana."

The sole question considered and decided by the Court was as to whether the act of Confirmation passed the fee to the land included in the grant to the grantee so as to support the plea of the Statute of Limitations or whether Limitation could only begin to run from the date of the patent. The Court stated the question thus:—

"The Plaintiff insists that this confirmation vested only an equitable title, and the Statute of Limitations did not begin to run until the fee passed out of the United States by patent in 1873. On the other hand the defendants contend that the fee passed directly to him in 1812 by the operation of the Act of June 13th, of that
312 year, and if so, it is conceded that the Statute of Limitations give them title."

The Act of Confirmation was construed by the Court solely for the

purpose of deciding this question and it is held that "it (the Act of Congress) does not require the production of "books before any commission or other tribunal established for that special purpose, but confirms, *proprio vigore*, the rights titles, and claims to the lands embraced by it, and operates as a grant to all intents and purposes. Repeated decisions of this court have declared that such a statute passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and a grant may be made by law, as well as by a patent pursuant to a law." The question as to whether the survey by the Government Surveyor under the Act of Confirmation and the patent issued upon survey was conclusive upon the issue as to what particular land was included within the grant to which the fee passed under the Act of confirmation itself, was not before the Court, and was therefore not decided and the case has therefore not the remotest bearing upon any question involved in this case.

In the case of Landau *vs.* Haines 21 Wallace 521, also cited by the Court, the rights of the parties litigant depend upon the decision of precisely the same question as is involved in the case of Ryan *vs.* Carter, 93 U. S. 78. Except that in the case in 21 Wallace the Court expressly held that the legal title passed to the grantee immediately upon the survey being made. In that case the Act of Confirmation by Congress contains a provision relating to the survey of the confirmed grant substantially the same as that contained in the Act of 1852 of Texas. One Tongas had a survey of his confirmed grant made in 1820 but no patent issued until 1872, when one issued reciting the Confirmation by the Act of 1807 of the report of the Commissioner, appointed under the Act of 1804. The patent purport- to "give and grant" to the heirs of Tongas, in fee, the tract in question. The defendant claimed as tenant under one Law, who for more than thirty years had been in the actual
313 possession of the premises under claim and color of title made in good faith. By the Law of Illinois such a possession constitutes a bar to any adverse claim.

The precise point decided by the Court below, was page 523.

"1st. That the Act of Confirmation of 1807, was a present grant, becoming so far operative and complete, to convey the legal title when the land was located and surveyed by the United States in 1820, as that an action of ejectment could be maintained on the same.

"2nd. That the patent was not of itself the grant of the and by the United States, but only the evidence that a grant had been made to the heirs of Jean Baptiste Tongas.

"3. That as Law went into the possession of the land under claim and color — title made in good faith and had held possession for more than seven successive years, and during that time, had paid all the taxes legally assessed upon the land before the commencement of this suit, it was a bar to a recovery by the plaintiff."

It was this ruling of the court below that the Supreme Court of the United States approved and affirmed, thus holding that the grant become complete and operative and conveyed the legal title when

the land was located and surveyed by the United States in 1820 and the issuance of the patent was merely an evidence of the right. In determining the effect of the patent and the survey under the congressional legislation, the Court says:—

"In the legislation of Congress a patent had a double operation. It is a conveyance by the Government when the Government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title it is documentary evidence, having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the Government.

314 In the present case the patent would have been of great value to the claimants as record evidence of the ancient possession and title of their ancestor and of the recognition and confirmation by the United States, and would have obviated in any controversy at law respecting the land the necessity of other proof, and would thus have been to them an instrument of quiet and security. But it would have added nothing to the force of the confirmation. The survey required for the patent was only to secure certainty of description in the instrument, and to inform the Government of the quantity reserved to private parties from the domain ceded by Virginia."

In the case of Morrow *vs.* Whitney 95 U. S. 551-555, the cases of Landau *vs.* Haines, 21 Wallace, 521 and Ryan *vs.* Carter 93 U. S. 78, are cited and reviewed. And it is again held that the Act of Confirmation passes the title to the land, it is also held that where the confirmed grant appears to have clearly defined boundaries, or which are capable of identification, a sub-quent survey and patent was unnecessary to perfect the claimant's title and would only serve as documentary evidence thereof. In determining, however, the effect of a survey by the Government Surveyor under the Act of Confirmation the Court holds that:—"It would have removed the doubt as to the boundaries of the tract which always arise where their establishment rest on the uncertain recollection of witnesses as to ancient possession."

— the case of Clark *vs.* Hills, 67 Tex. 141, also cited by the Court of Civil Appeals, the Ponce de Leon grant was confirmed by the Act of Feb. 11th, 1858, but no survey thereof was made by the Official Surveyor as provided for in the 2nd section of the Act. The grantee electing to reply upon the Act of Confirmation as conclusive on the question of title and upon proof of the original boundaries are established under the Mexican Grant, rather than upon a re-survey under the Act of Confirmation. The Court reviews the cases of Ryan *vs.* Carter, Landau *vs.* Haines, West *vs.* Cochran, Water-

315 man *vs.* Smith, 13 Cal. 733, and Morrow *vs.* Whitney, and correctly holds that under the authority of those cases that the confirmation was not limited, impaired or conditioned by the provisions of the second section of the Act with reference to the survey of the land, but that the owner of the grant could make proof

of the original boundaries, and claim title to all the land included therein. In passing, however, upon the question as to the purpose and effect of the survey, if it had been made under the second section of the Act of confirmation, the Court says:—

"The survey and patent were required to secure certainty in the description in the land and to furnish the owners with the highest evidence of the validity of their claim to the extent of the boundaries described in the patent. These according to the Statutes were to be included precisely the same land granted by the Mexican Government, and the patent would be the highest evidence as to this. But in case no patent thereafter issued and no survey made, the right of the grantee or his assigns were not lost, but they were forced to bring other proof of the location of the boundaries of the land described in the grant. The survey was of use to the State also, as by it the metes and bounds of the land would be so well defined as to show with certainty what land, by reason of the grant was not subject to future appropriation. But if this had been a matter of vital importance, the Legislature would have doubtless required the survey to have been made, and the field notes returned within a limited time, and would have declared the land forfeited unless the survey was made. In the case where a grant of a former government is confirmed the survey becomes important, only when the lands have not been previously surveyed, so as to designate it from the adjoining territory, or when the description of the land is so vague as to require a survey to designate and fix its boundaries with certainty."

316 We beg the court to carefully read the cases above cited, and we further beg to most respectfully, yet positively state that there is no decision, of any court, which holds to the contrary. Commonwealth *vs.* Pejepscut, Prop. 10 Mass., 156. In that case the Attorney General of the State of Mass. attempted to recover certain lands, which was the subject of the suit by introducing evidence tending to disturb boundaries which had been established by resolutions passed by the Legislative Body for the Province of Massachusetts Bay in 1787. In the statement of the case it appears that,

"The counsel for the defendants objected to the admission of any such evidence, and contended that the said resolve of March 8th, 1787, was sufficient in law to estop the commonwealth from showing any evidence of the facts which the attorney-general offered to prove as aforesaid. And after hearing the said attorney-general in reply, the judge who sat in the trial, gave his opinion that the said resolve was sufficient, etc. and the evidence was accordingly rejected."

The Court in passing upon the effect of the Legislative enactment said:

"An act of this kind, directly applicable to the rights and claims of individuals, and explicitly referring to them, has the effect of a confirmation or grant, or of a private statute for their direction and relief. A legislative decision in such case, may not be conclusive upon the individuals concerned, supposing it rejected by them for

good cause, or that an adverse claim should be afterwards maintained, upon further evidence than the legislature may have had to influence their decision. And it might be competent for the legislature, when their decision had not been accepted, or discovering any mistake or deception, to avoid their grant, or to annul their decision, by repealing the legal provision which they had enacted.

In the case at bar, however, there is no averment or evidence offered, of any rejection by the defendants of the provision
317 made for them by the legislature. Their acceptance of it, their concurrence as virtually parties to it, may be presumed until an express dissent is proved, and their pleading, and relying upon it in these proceedings render the act conclusive upon them. And we may add that the Act has not been repealed, and in directing and authorizing informations against these defendants, to bring to question their title to the lands demanded, other motives are avowed than a disposition on the part of the legislature to avoid their act of March 1787. Evidence of the kind thereby established must be regarded as of too high a nature to be contradicted by other proof, particularly when offered in the name of the party, high and respectable as it is, by and for whom the former declaration and act still remaining in force, had been made. Of a common person we should say: *Allegans contraria non est audiendus.*"

The same general doctrine runs through every case that has ever been decided by any Court. Indeed the very cases which the Court of Civil Appeals cites to support its holding, that the appellant is bound by the survey and patents of the grant lying to the east and the west of the Arriba, and cannot claim any land not included within the patents although it may have been within the original grants, are all decided and based upon the principal announced in the cases of Menard's Heirs *vs.* Massey, 8 How., 293, Guitard *vs.* Stoddard, 16 How. 494, Bryan *vs.* Forsyth 19 How., 733, above cited.

In the case of United States *vs.* Roselius 15 How. 34, cited by the Court of Civil Appeals, the Supreme Court of the United States says:

"Nothing could be fraught with worse consequences as regards confirmations by congress or by commissioners acting by its authority, than to hold, that when a doubtful claim was confirmed on certain terms and the claimant accepted those terms and took the full benefit of the confirmation, that still he could come into the courts of justice and enforce his entire claim for the deduc-
318 tions made by congress, as if no adjustment had been made. Such cases must stand on the footing of compromise, and all equities existing when the compromise was made, and not provided for by it, must be deemed to have been abandoned. If it were otherwise, then there would be no end of these pretensions to compensation, before congress and the courts. But to hold that the confirmation was final, and conclusive of the whole claim (as we think it clearly was) then the country will, at least, find repose, and the cultivator of the soil will know from whom to buy, and take title."

In the case of Arguello *vs.* United States, 18 How., 539, also cited by the Court of Civil Appeals the Supreme Court of the United States, after citing certain proceedings had to ascertain the exact boundaries of the grant in question, said:

"Here we have the first proceeding which can operate as an estoppal on either party. The king may be estopped by his deed, and the appellants by accepting as a definitive title to the Las Pulgas, a deed excluding the valley of Raymundo, are estopped from asserting that it is included in their grant. Here for the first time, we have a juridical investigation to ascertain and fix the boundaries of Las Pulgas. A name which represented heretofore an unknown quantity had been reduced to certainty. This grant has been registered among the public archives accepted by the claimants, and possession delivered accordingly. Having thus, by a regular juridical proceeding, ascertained the boundaries and quantity of land represented by the name of Las Pulgas, the valley of Raymundo being without the boundary so fixed is in 1840, granted as public land to Coppingeer.

There is no evidence to show either fraud or mistake in these proceedings. The appellants have got Las Pulgas by a valid title according to the boundaries ascertained by the proper public authorities and cannot be permitted to recur to vague tradition of a vague and uncertain boundary, to unsettle the titles to a
319 large territory since granted to others."

In the case of Forbes *vs.* Withers, 71 Tex. 472, the only other case cited by the Court of Civil Appeals to support the proposition that the grantees are bound by the surveys and patents, hold that the file of a land certificate, is the initiatory step provided by the statute for the acquisition of public land, by the holder of a certificate, and is merged in the survey, and that therefore in determining what land was granted by the patent reference will be had to the survey actually made and not to the file.

The appellant has never at any time, and does not now question the soundness of the principals announced in the three last cases cited. Indeed he has throughout this litigation, and does now earnestly insist that the rule of decision which underlies these cases shall be applied in this one.

It certainly must be perfectly apparent to the Court that the cases of Menard's Heirs *vs.* Massey, Guitard *vs.* Stoddard, Bryan *vs.* Forsyth, West *vs.* Cochran, Ryan *vs.* Carter, Langdeau *vs.* Hanes, Morrow *vs.* Whitney, United States *vs.* Roselius, Arguello *vs.* United States, Clark *vs.* Hills, Forbs *vs.* Withers and Commonwealth *vs.* Pejepscut Prop, are all in perfect harmony, and that there is not a shadow of conflict discoverable in the entire line of cases.

It is respectfully submitted that a review of these cases leads to the conclusion that the following principles of law as applicable to cases of this character are established by an absolute unanimity of decision.

1. In cases where a grant of a former government is confirmed on condition that the grantee will have the boundaries ascertained

in the manner prescribed by law, a failure to have the survey made operates as a forfeiture of the confirmation. (West *vs.* Cochran, 17 How., —.)

2. In cases where a grant of a former government is confirmed unconditionally by the Act of Confirmation, containing the provisions for a resurvey, but prescribes no penalty or forfeiture
320 for a failure to have such resurvey made, the grantee may elect to rely upon his boundaries as established by the original grant of the former government, or to pursue the means prescribed by the Legislature for fixing its boundaries. (Ryan *vs.* Carter, Clark *vs.* Hills and other cases cited above.)

3. In cases where a grant of a former government is confirmed the resurvey becomes important in the following character of cases:—

a. When lands have not been previously surveyed. (Clark *vs.* Hills.)

b. When the description of the land is so vague as to require a re-survey to designate and fix its boundaries with certainty. (Clark *vs.* Hills.)

c. When it will serve to remove the doubt as to the boundaries of the tract, which always arise when their ascertainment rests in the uncertainty of the memory of witness as to ancient possession (Morrow *vs.* Whitney.)

4. In cases where the grant of a former government is confirmed by Legislative Enactment which provides for a resurvey for the purpose of ascertaining exact boundaries, and prescribe the manner in which, and the public official by whom, the said resurvey shall be made, the Courts are bound by the Legislative decision that the case belongs to one of the classes in which a resurvey is important and useful to the government and the grantee (West *vs.* Cochran.)

5. In cases where a grant of a former government is confirmed by Legislative Enactment which contains a provision for a resurvey for the purpose of ascertaining its boundaries and prescribes the instrumentalities and the public official by whom such survey shall be made, and such survey is made by the officer designated, the act of confirmation becomes so far operative and complete as to convey the legal title to the land included within the survey. (The decision of the Court below in the case of Langdeau *vs.* Hanes affirmed by the Supreme Court of the United States.)

321 6. Such a survey is conclusive evidence against the government that the lands granted by the confirmation is the same described and bounded by the survey. This construction depends on the fact that the claimant and the United States were parties to the selection of the land and were mutually bound and estopped by it. (Menard's Heirs *vs.* Massey, Guitard *vs.* Stoddard, Bryan *vs.* Forsyth). If accepted by the grantee such survey is for the same reason conclusive evidence against him that the lands granted by the confirmation was the same described in the resurvey. (United States *vs.* Roselius, 15 How., 34, Arguello *vs.* United States, 18 How., 539.)

The sole qualification to this rule is that the survey could be impeached by either party by timely allegations and proof of fraud.

7. In cases where the Legislative enactment confirming the grant of a former government and providing for a resurvey under the confirmation and authorizing a patent to thereafter issue on the resurvey, the grantee's title to the particular land is perfected when the survey is made and the legislative grant became complete to that particular land upon the making of the resurvey. The patent is not necessary to perfect the grantee's title, nor does it add anything to that title. It only serves as evidence of the grant (Langdeau *vs.* Hanes, Clark *vs.* Hills.)

It is also most respectfully submitted that an application of the above stated and well established principles to this case demonstrates the correctness of appellant's contention, which is so well stated by the Court of Civil Appeals in these words:—"That the provisions of the Act of 1852, confirming the grant under which they claim, providing for a resurvey of the land embraced in said grant, constituted a valid and binding agreement on the part of the State, with owners of the said grant that they should acquire and be entitled to the land embraced in the survey made in pursuance of the provisions of said Act." It is quite true, as stated by the
322 court that inasmuch as the grant was confirmed unconditionally, the grantee's right, whatever land was included in the boundaries of the grant, as originally made, was not dependent on the resurvey. This is well settled by all of the authorities. It is, however, equally well settled that when the Legislature provided that a resurvey might be made, if the grantee so elected, it was thereby conclusively determined that this grant and all other mentioned in the Act of Confirmation belonged to the class wherein a resurvey was important and desirable in order to designate and fix their boundaries with certainty. It was for the Legislature alone, to decide whether the previous survey under the Mexican grant was or not sufficient for that purpose. It is also well settled by the authorities, that where the grantee elects to have the survey made, and it is made by the officer designated in the Act of Confirmation, it becomes conclusive evidence, in the absence of allegations and proof of fraud, both against the State and claimant that the lands granted by the confirmation "were the same described and bounded by the survey." The law is thus settled, not because the surveyor is any more the agent of the State than he is of the claimant, but as stated by the Supreme Court of the United States, because the claimant and the State "were parties to the selection of the land, and were mutually bound and respectively estopped by it."

This Court has repeatedly held in the case of Howard *vs.* Perry, Hamilton *vs.* Avery and Wright *vs.* Hawkins, above cited, and many other cases familiar to the Court, that a survey by the Official Surveyor designated by law, the field notes of which are returned to the General Land Office, as the law requires, create a vested right and that the field notes of such a survey, when duly returned by the official surveyor forms one of the miniments in the title of the claimant.

In this connection we beg to call the Court's attention to what appears to be a strange inconsistency in the opinion of the Court of Civil Appeals in this case and that in the Corrigan case.
323 The District Court rendered judgment in this case for the State for two tracts of land lying in the eastern part of the 55,500 acre tract of land described in the petition. This land the State claimed and the court held was not included within the boundaries of the Santa Rosa de Arriba Grant and the State was entitled to recover it notwithstanding the fact that it was admitted that it was included within the boundaries of the re-surveys by Blucher under the Act of Confirmation. The State also recovered another tract of land lying on the west side of the 55,500 acre tract described in the petition. This tract, it is contended by the State, was not included within the boundaries of the Santa Rosa de Arriba Grant, as originally made, but it was admitted that it was included within the boundaries of the El Tule and Encinal Grants, (both of which belong to the defendant, and were confirmed and patented) as the same were originally made under the Mexican government. The State contended however, and successfully in the court below, that because when these two grants were re-surveyed under the confirmation thereof, and the tract last mentioned as having been recovered by the State was left out of their boundaries, the owners of the grants upon accepting the patents thereby relinquished all claim to any land "that may have been included in all the grant confirmed, but not embraced in their patent." In other words the Court holds that the State is not in any way bound by the re-survey made by its chosen and designated official surveyor, if he stepped one foot beyond the boundaries of the original grant, but the owner of the grant is bound if he causes the survey to be made and the surveyor leaves out a part of the original grant. On the eastern side the owner loses the land because the survey of the Santa Rosa de Arriba was, as the State contends incorrect and included land which was not originally within the boundaries of the grant as made by the Mexican government, and the State is therefore not bound by it, and on the western side the owner of the grant loses the land because the survey by the official surveyor is incor-
324 rect in that it leaves out land which was admittedly included within the boundaries as the grant was made by the Mexican Government, and the owner is bound by it. It is also apparent that ruling of the Court in this case so far as it affects the tract on the western side of the land in controversy is manifestly in conflict with the ruling of the same court in the Corrigan case. There was in this case absolutely no evidence that the owners of the El Tule and Encinal Grants caused the re-surveys to be made or accepted the patents further than the proof of the fact that the re-surveys were made and the patents issued. These facts were proven in the Corrigan case, as is stated by the opinion of the Court. In that case the Court held that the owner of the Ynojosa grant was not bound by the re-survey and patent, and in this case the court holds that the owner of the El Tule and Encinal Grants is bound. The truth is that inconsistency, confusion and disorder are the in-

evitable result of going behind the various acts of the confirmation and the re-suveys thereunder in a stumbling search of the boundaries of the original plant.

It is most earnestly and respectfully submitted that the only safe rule to adopt in cases of this character and the only one which finds any support whatever in the authorities is to hold that the question as to what were the boundaries of the Santa Rosa de Arriba Grant, as the same were originally made, was a question which was open to judicial inquiry up to the time of the re-survey of the Grant under the Act of Confirmation and the return of the field notes to the General Land Office and not thereafter. The owner of the grant by that re-survey acquired title to all the land included within it. In truth the effect of the judgment in this case is to attack and destroy the resurvey on the ground that it is incorrect. The case is therefore one in which the State is attacking plaintiff in error's title, and it must succeed in destroying that before any question of boundary can or should arise. Indeed the Court of Civil
325 Appeals recognized the necessity of the State being successful in destroying the resurvey and the field notes thereof as one of the muniments in the plaintiff in error's title before, it can be heard on the question of boundary. The Court therefore held that the survey was void if it was incorrect. The Court uses this language:—

"If the survey caused to be made by the owners of the grant in this case under the Act of Confirmation included other or more land than the original grant and survey made by virtue thereof, it would be void as to such other land or excess."

[illegible]th Assignment of Error.

The Court of Civil Appeals erred in holding that "there is evidence tending strongly to show disapproval by the State of the Blucher Survey, the endorsement on the field notes thereof, above quoted, and the failure to patent the land according to such survey are evidence of this character" because there is no evidence in the record tending to show the disapproval of the Blucher Survey by the State or any one authorized to act for it.

Statement.

See foregoing statement, from which it appears.

1. That Blucher's survey was made in 1859, returned and filed in the General Land Office in 1869, and

2. The grant as surveyed by Blucher was delineated on the official maps of the General Land Office as early as 1875. (See Map E sent up with the record. See also admission of Attorney General contained on p. 35 of his brief, that "The survey of railroad sections on the East called for the East line of the Santa Rosa de Arriba," referring quite evidently "to the East line as re-surveyed by Blucher. The same may be said with regard to the calls for the

patents to the Encinal and El Tule Grants in the calls for the West line of the Santa Rosa de Arriba."

For field notes of the re-survey of the confirmed Encinal Grant which abuts the Santa Rosa de Arriba on the South and West, and the patent thereon issued by the State. See Trans. pp. 30
326 and 32. This patent was issued Feb. 18th, 1886.

For field notes of the re-survey of the confirmed El Tule Grant and the patent issued by the State thereon see Trans. pp. 37, 38 and 40. This patent issued July 30th, 1878.

For field notes and patents of the railroad sections abutting the Santa Rosa de Arriba on the East, see Trans. p. 70 and sketch accompanying the same. Trans. P. 72. These surveys were made in the years 1879 and 1881.

The Court of Civil Appeals holds that the evidence indicating a rejection of the re-survey by the State, consists of:—

1. The fact that a patent was not issued.

2. Two endorsements found on the Blucher Field Notes on file in the General Land Office, endorsements having been made by clerks in that office and read as follows:—

"It appears according to Antonio Garza field notes 1/566 that these field notes are correct but not returned yet. April 6th–71—M. Stakeman, confirmed for 6½ leagues."

"Closes pretty well by the approximate area found with apportioning error 267,552,959 square varas equal to 10 leagues 17½ labors of 55,252,959 square varas too much. August 12, 1869. Richardson $2.00" Trans p. 62.

Blucher's calculation of the area of grants as surveyed by him is 8½ leagues.

Remarks.

It was with the utmost respect for the Court of Civil Appeals, suggested that in the portion of its opinion which relates to the subject now under consideration another inconsistency is apparent. In one portion of the Court's opinion the facts are discussed which are supposed to indicate a rejection of the survey, by the Commissioner of the General Land Office, and in another portion of the opinion is discussed those facts tending to show his acceptance thereof. In one place the Court uses the language referred to in the foregoing assignment of errors, namely "In fact there is evidence tend-
327 ing strongly to show the disapproval by the State of the Blucher re-survey and endorsement on the field notes thereof, above quoted, and the failure to patent the land according to such surveys are evidence of that character." Elsewhere in the opinion the Court says with relation to the delineations of the grant on the maps in the General Land Office, "but considering that it (the delineation) was intended to represent the Blucher re-survey, which delineation was merely the unauthorized act of a ministerial officer, and as such does not bind the State." It would seem to be the settled law under all of the authorities that no other power was conferred upon the Commissioner of the General Land Office by the Act of Confirmation than those which pertain to a ministerial officer.

In so far as the Court of Civil Appeals is the last above quotation from its opinion so holds, its ruling is supported by the authorities. If this is true then three deductions must inevitably follow, name-:—

First. The Court of Civil Appeals is in error holding that by any endorsement placed upon the field notes by the official surveyor, or by a failure to issue a patent thereon, the Commissioner of the General Land Office, or any clerk in his office, had the power to disapprove the survey.

Second. The issuance of the patent by a ministerial officer—that is the Commissioner of the General Land Office—would not have affected the claimant's title, but would have been mere documentary evidence thereof, and

Third. The grantee's title to this particular land was perfected by the re-survey and the return of the field notes thereof to the General Land Office, and was not affected or impaired by the non-issuance of patent.

The latest authority in support of the foregoing deductions is found in the decision of the Court of Civil Appeals in the Corrigan case, in which it is said that "the mere ministerial act of issuing the patent would not affect the legal title already in ex-
328 istence."

In the very nature of things, the duties imposed upon the General Land Office by the Act of Confirmation were purely ministerial. There was no possible way for the Commissioner to determine whether the resurvey conformed to the boundaries of the original grant or not. The determination of that question was committed, by law, to the Official Surveyor. In the light of the terms of the Act, by reason of the nature of the transaction, and under an unbroken line of decisions, it must be held that the patent furnishes mere documentary evidence of the title which has theretofore been perfected The fact therefore that the patent did not issue cannot be considered as any evidence tending to show that any one having authority to do so has disapproved this survey On the other hand since the issuance of the patent would not add anything to the grantee's title, then if the plaintiff in error's title in this case is subject to attack, it is certain that in the same manner and by the same character of the proof the title of any confirmed grant can be placed in peril and destroyed even though a patent has issued upon the re-survey That this is the inevitable result of the ruling of the Court of Civil Appeals in this case is shown by the fact that in the Corrigan case the same Court holds that the issuance of a patent adds nothing to the sancity and conclusiveness of the transaction.

It is most respectfully submitted that there is absolutely nothing in the record to indicate that the Commissioner of the General Land Office assumed any authority or power to reject the re-survey. Indeed, if the endorsements in pencil on the field notes referred to by the Court of Civil Appeals can be construed into an indication that the examining clerk of the Land Office thought that the field notes were in any respect incorrect, they furnish for that very reason evidence that the Commissioner of the General Land Office understood that this was a matter with which he had no concern and

with relation to which he had no authority for the undis-
329 puted evidence shows that he platted the re-survey on the maps of the General Land Office, as he was by law directed to do notwithstanding the endorsements on the field notes. He simply performed the duty imposed upon him by law, as a ministerial officer, and delineated the re-survey upon the map. The Court of Civil Appeals seems to be of the opinion that the endorsements signed by Richardson is an indication that this particular examining clerk was assuming the power to disapprove the survey because it included more than six and one-half leagues of land. Aside from the question that the clerk had no such power (Thompson *vs.* Railway 68 T. 377) the fact is capable of mathematical demonstration that the endorsement does not indicate that he assumed any such power. This endorsement indicates no more than the examining clerk's calculation of the area contained in the Blucher field notes did not correspond with Blucher's calculation of the area. Blucher said that the survey contained 8 leagues and 12 labors, its area should therefore have been 212,300,000 square varas. According to the calculations of the examining clerk in the land office it contained 55,252,959 square varas more than 8 leagues and 12 labors. The endorsement thereon does not purport to criticise the survey, because it contains more land than the grant was confirmed for, nor does it attempt to disapprove the survey on that ground, but it purports to be, and is in fact nothing more than a mere correction of Blucher's calculation of area. In this connection the court will recall the provision of the Act of Confirmation in which the Legislature provides in expressed terms that the quantity of land is not to be considered, except for the purpose of seeing to it that the grantee is given no less than the amount for which the grant was originally made. The learned Court of Civil Appeals in the Corrigan case comments upon this provision of the law and upon the well known historical fact that at and prior to the date of the passage of the Act of Confirmation of 1852, land was considered of little value and quantity was not nearly of so much importance as cer-
330 tainty. The broad and liberal views expressed by the learned Court of Civil Appeals in its opinion in the Corrigan case dealing with the large excess contained in the grant there involved is in noticeable contrast with the rigidity with which the same Court holds this plaintiff in error down to course and distance and permit the State to recover the excess. However that may be, the Court of Civil Appeals in the Corrigan case expressly recognizes the well known fact that it was never intended by the legislature that under the Act of Confirmation of 1852, the Commissioner of the General Land Office should refuse to accept the re-survey made under its provisions by the official surveyor, because it contained an excess. Indeed it is a fact so well known and shown by the reported cases that the court should take judicial cognizance thereof that no re-survey of any of these confirmed grants has ever been rejected because it contained more land than called for in the original grant, but on the contrary patents have been issue- to grants containing much larger excess than does the Santa Rosa de Arriba.

Tenth Assignment of Error.

The Court of Civil Appeals erred in holding and in not granting plaintiff in error's motion for rehearing filed herein because if it be held that this suit was brought and recovery had under the provisions of an Act by the Legislature of the State of Texas, entitled:—"An Act to provide for ascertaining and adjudicating certain claims against or in favor of the State for lands, titles to which are claimed to have emanated from the Spanish or Mexican Government, to adjust and settle the rights of the State and the owners or claimants respectively of such lands, and if found valid, to confirm as against the State, the right and title of such claimants or owners, and to provide for the patenting of the same when title thereto has been confirmed by suit or otherwise, and for the recovery thereof by the State when the claimant has not title thereto." Approved September 3rd, 1901, then said Act, as enforced against this defendant is invalid and void because in violation of paragraph 1, Section 10, Art. 1 of
331 the Constitution of the United States, because said Act impairs the obligation of a valid and subsisting contract between this appellant and his privies in title entered into prior to the passage of the said invalid Act of the Legislature herein enforced against this appellant. Said valid and subsisting contact which is impaired by the enforcement of said invalid Act of Feb. 10, 1852, providing for a resurvey of the Santa Rosa de Arriba grant among others and the acceptance of the provisions of said Act by this appellant and his predecessors in title.

Remarks.

It is earnestly insisted on behalf of the plaintiff in error that the Act of February 10th, 1852 was under all of the authorities an offer made in good faith by the State of Texas, in its sovereign capacity, to refer, by agreement to the official surveyor the duty of definitely ascertaining the precise lands to which the owners of the confirmed grants should acquire title under the Act of Confirmation. Such offer, when accepted, constituted a valid and binding contract between the State and the owners of the grants. The acceptance was complete when the claimant caused the survey to be made by the officer designated by law, and the field notes of the said survey to be returned to the General Land Office. When this was done, as it was in this case, both parties to the transaction were, under every known principle of law or justice, bound by their solemn contract thus entered into. That the State fully recognized that this was the effect of the Act of Confirmation and the survey thereunder by the official surveyor, is abundantly evidenced by the fact that it has, in every possible way, recognized every acre of this land as being the private property of the owners of the grants for nearly half a century, and has permitted them, without question, to have it all under fence and in actual use and occupation for about twenty-five years,

and, in the meantime, the land has been the subject of sale and purchase by parties acting in perfect good faith, and relying
332 upon the conclusiveness and binding force and effect of the contract between the State and the former owners of the grant. The State has never at any time evinced the slightest disposition to repudiate the contract or to destroy the vested rights acquired thereunder, unless such was the purpose of the Act of September 3rd, 1901. It is earnestly insisted by the plaintiff in error that the Act under which this suit purports to have been brought is not susceptible of any such construction. It, is however respectfully submitted that if it is so construed and enforced in this case, it is invalid and void because in violation of the Constitution of the United States, as pointed out in this assignment of error. The Court of Civil Appeals, in passing upon the question raised by this assi-nment of error in its opinion handed down on the motion for rehearing held as it did, in the original opinion, that the contract or agreement embraced in the Act of Confirmation upon the part of the State extends only to the relinquishment of the land embraced in the original grant. If this is true, in the sense in which it is stated and applied by the Court of Civil Appeals in this case, then the result is that the provision of the Act of Confirmation which requires the resurvey is meaningless, and a compliance with it would be doing of a fruitless thing. Under this rule the survey would only be given effect in the event the interested parties, the State and the claimant, should forever thereafter be prepared to prove that it corresponded with the boundaries of the original grant, and in such a case there would be absolutely no need of a resurvey. The result would be to disregard it in every case in which it would be of any service either to the State or to the land owner. It would, in other words result that in all cases in which at this late date, it should be discovered that the original land-marks had disappeared, or in which there was a conflict in the evidence as to their location or identity, the resurvey under the Act of Confirmation would be set aside and disregarded, and the whole matter would rest upon the uncertain recollection of witnesses.

333 *Eleventh Assignment of Error.*

The Court of Civil Appeals erred in holding in its original opinion that this suit could be maintained under Section 8 Chapter 11, First Called Session of the 26th Legislature, page 633.

Remarks.

Section 8 of the Act above referred to declared that when any land belonging to the permanent public school fund, or other public lands of the State held or owned by any fund, or held and occupied by any person, association, or corporation adversely to the State, or to such fund "it shall be the duty of Attorney General to institute suit therefor, together for rent thereon, for any damages thereto,

and for the purposes of such suit for such land or affecting the title thereto or rights growing out of the same, the venue thereof is fixed in Travis County, Texas, concurrently with the county of the defendant's residence," etc.

The suggestion contained in the Attorney General's brief in this case that this suit might be held to be authorized and brought under the Act of the Legislature last above referred to, coming, as it does, in the nature of an after-thought, almost amounts to an admission that the suit was not well brought or was not well proven under the Act of 1901. In the original opinion of the Court of Civil Appeals that court seems to have considered that there was merit in this suggestion of the Attorney General. It appears, however, that in the opinion handed down on the motion for rehearing, the court recedes from its former position on this point and holds that the case was properly proven, and could be maintained under the act of September 3rd, 1901.

Twelfth Assignment of Error.

The Court of Civil Appeals erred in affirming the judgment of the court below because if it be held that this suit was brought and recovery had under Section eight of an Act of the Legislature of the State of Texas, entitled: "An Act to define the permanent
334 school fund of the State of Texas, to partition the public lands between said fund and the State and to adjust the account between said fund and the State, to set apart and appropriate to said school fund, in part payment of said account, the residue of the public domain of said State, to which the said fund is entitled under Sec. 2, Art. 7 of the Constitution adopted April 17th, 1876, to appropriate the sum of Seventeen Thousand, One Hundred Eighty and Twenty-seven One-hundredths dollars to the permanent school fund from the general revenue not otherwise appropriated in full payment of the balance due to said fund by the State of Texas under the Constitution of 1876. To provide for the survey, purchase, and lease of said land, and the issuance of patents in certain cases. And providing for suits in Travis County against any person claiming any of the lands belonging to the school fund or any other funds," approved February 23rd, 1900, then said Section 8 of said Act of the Legislature, as the same is enforced against this appellant, is invalid and void because the same is in violation of the provisions of paragraph one, Section ten, Article one of the Constitution of the United States, because said Act impairs the obligation of a valid and subsisting contract between this appellant and his privies in title entered into prior to the passage of said invalid Act of the Legislature herein enforced against this appellant. Said valid and subsisting contract which is impaired by the enforcement of said invalid Act consisting of the provisions of the Act of Feb. 10, 1852, providing for a resurvey of the Santa Rosa de Arriba grant, among others, and the acceptance of the provisions of said act by this plaintiff in error, and his predecessors in title.

Remarks.

If any Act of the Legislature of the State of Texas is so construed and enforced against the plaintiff in error as to uphold the recovery in this case, then it is respectfully submitted that such Legislative Act is, for the reasons stated under the tenth assignment of error, violative of the Constitution of the United States.

335 *Thirteenth Assignment of Error.*

The Court of Civil Appeals erred in not holding and finding that all of the land recovered by the State of Texas was included within the boundaries of the Santa Rosa de Arriba grant as originally made by the Surveyor General of the State of Tamaulipas, and in not holding that there was no more than a mere scintilla of evidence to the contrary.

Remarks.

It is deemed proper to here explain that the immensity of the record in this case is accounted for by the fact that the case was tried in the court below on the theory that the issue of fact as to where the boundaries of the Santa Rosa de Arriba grant were established by the Surveyor General of the State of Tamaulipas was still an open one into which the court could, at the suit of the State inquire.

It was, on behalf of the plaintiff in error, earnestly contended in the District Court and in the Court of Civil Appeals, and is in this court, that by the Act of Confirmation and the survey thereunder by an official surveyor, and the return of the field notes of such survey to the General Land Office, and the delineation of the said survey upon the official maps of the said office, the original grant by the State of Tamaulipas was completely merged into the Legislative grant by the State of Texas, and the re-survey thereunder.

Under the Legislative grant and the survey thereunder the owners of the grant acquired a perfect title, which has been recognized as such for nearly fifty years to all of the land included within the survey. The muniments of this title consist of the Act of Confirmation of February 10th, 1852, and the field notes duly returned to the General Land Office of the survey under the said Act by the official surveyor. It has been throughout this litigation and still is earnestly insisted by the plaintiff in error that before any
336 question as to the boundaries of the original Mexican grant can be heard or determined one of the muniments in plaintiff in error's title, to-wit:—the field notes of the survey, under the Act of Confirmation, must for some good and sufficient re-son, be destroyed, annul-ed and disregarded.

The District Court and the Court of Civil Appeals have held in this case that the plaintiff in error, and his vendors acquired no title under the Act of Confirmation and the resurvey thereunder, but that the only title which he has to any land is such as was conveyed and vested by the original grant by the State of Tamaulipas.

On the other hand, the plaintiff in error contends that the Mexican grant was merged into the Legislative grant, under which the plaintiff in error claims and holds a perfect title to all of the land included within the survey made under the Act of Confirmation.

It is therefore, not until this question of title is finally decided against the plaintiff in error that the issue of fact as to where the boundaries of the original Mexican grant were actually established on the ground by the Mexican Surveyor General can be *ac*quired into.

The court below ruled against the plaintiff in error upon the question of title involved in the case, and this ruling made it necessary for the parties to introduce evidence upon the issue as to the proper location of the boundaries of the original Mexican grant. The voluminous record in this case is principally made up of the evidence introduced upon this issue.

The primary question in this case, and the one which this court must consider and determine before it reaches any boundary question what ever is one of title, pure and simple.

We have so far trespassed upon the time of this court as to discuss this controlling question of title, and all of the assignments of error pertaining to it, fully in this application for writ of error.

337 It is confidently believed that this question must be decisive of the case, and that, under the long and unbroken line of authorities cited, it must be held that the courts will not, at the suit of the State go behind the Act of confirmation and the survey thereunder, and inquire into the boundaries of the original grant.

It is therefore deemed unnecessary to encumber this petition with any discussion of the boundary question, which the District Court and the Court of Civil Appeals erroneously held was involved in the case. In obedience to the ruling of the Court below, this issue was fully tried, and the plaintiff in error contends that it was clearly proven that the Blucher survey substantially conformed to the original boundaries of the grant. The court below found on this issue in favor of the State. On appeal the evidence bearing upon this issue, and the law applicable thereto were fully discussed in appellant's brief, and motion for rehearing, and upon that discussion, the plaintiff in error will here rely if that question is ever reached and considered by this court.

Wherefore, for the errors complained of, plaintiff in error prays that a writ or error will issue for the revision and correction of the errors herein complained of.

Respectfully submitted,

(Signed) J. C. SULLIVAN,
OGDEN & BROOKS,
Attorneys for Plaintiff in Error.

(Endorsed:) No. App. 5058. In the Supreme Court of the State of Texas. D. Sullivan, Plaintiff in Error *vs.* The State of Texas, Defendant in Error. Petition for Writ of Error. J. C. Sullivan, Ogden & Brooks, Attorneys for Plaintiff in Error. Filed in Court

of Civil Appeals 3rd Supreme Judicial District Austin, Texas, Apr. 19, 1906. R. H. Connerly, Clerk. Filed in Supreme Court Apr. 23, 1906. F. T. Connerly, Clerk.

338 CLERK'S OFFICE, SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above and foregoing 57 pages contain a true and correct copy of the Petition for Writ of Error in application No. 5058 D. Sullivan, Plaintiff in Error *vs.* The State of Texas, Defendant in error, which said application for writ of error was dismissed for want of jurisdiction by the Supreme Court on April 25th, 1906.

I further certify that a motion for rehearing filed by the Plaintiff in error on May 10, 1906, was overruled by said Court on May 17, 1906.

In testimony whereof witness my hand and the seal of the Supreme Court of Texas at the City of Austin this the 17th day of July, A. D., 1906.

[SEAL.] (Signed) F. T. CONNERLY, *Clerk.*

(Endorsed:) D. Sullivan, Plaintiff in Error, *vs.* The State of Texas, Defendant in Error. Certified Copy Petition for Writ of Error. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, July 17, 1906. R. H. Connerly, Clerk.

Judgment.

In Supreme Court of Texas, 3rd District.

D. SULLIVAN
vs.
STATE OF TEXAS.

APRIL 25TH, 1906.

This day came on to be heard the application of D. Sullivan for a writ of error to the Court of Civil Appeals for the Third District, and the same having been duly considered, it is ordered that said application be dismissed for want of jurisdiction. That the
339 Applicant, D. Sullivan and his sureties, Daniel J. Sullivan and Walter Sullivan pay all costs incurred on this application.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on the application for writ of error in the above styled cause.

Witness my hand and the seal of said Court, this the 18th day of May A. D., 1906.

(Signed) F. T. CONNERLY, *Clerk,*
By J. S. MYRICK, *Deputy.*

Mo. for rehearing overruled May 16, 1906.

[SEAL.]

(Endorsed:) Application No. 5058. D. Sullivan *vs.* State of Texas. Copy of Judgment in Supreme Court. Application for Writ of Error Refused. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, May 18th, 1906. R. H. Connerly, Clerk.

Bill of Costs.

Clerk's Office, Supreme Court.

No. 5058.

D. SULLIVAN
vs.
STATE OF TEXAS.

Certified Copy Bill of Costs, Supreme Court.

Filing Application	.50
Docketing Petition	.50
Entering Appearance of Counsel	.50
Filing Two Briefs	.60
Filing Three Papers	.90
Entering Orders	1.00
Entering Judgment on Application	1.00
Certified Copy of Judgment	1.00
Taxing Costs of Application	.50
Certified Copy Bill of Costs	1.00
Filing and Entering Motion	.55
Total	$8.05

340 I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and seal of said Court, at Austin, this the 18th day of May, 1906.

[SEAL.] (Signed) F. T. CONNERLY, *Clerk.*

(Endorsed:) Application No. 5058. Certified copy Bill of Costs in Supreme Court, Austin. D. Sullivan *vs.* State of Texas. $7.00. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 18th, 1906. R. H. Connerly, Clerk.

Proceedings in Court of Civil Appeals.

Order Allowing Writ, &c.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

D. SULLIVAN, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error, from the Supreme Court of the United States to the Court of Civil Appeals in and for the third Supreme Judicial District of the State of Texas, and upon the examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present, in the Supreme Court of the United States, the question presented by the record in this matter, it is ordered that a writ of error be, and is hereby allowed to the Supreme Court of the United States with supersedeas, and that the bond for the sum of Five Thousand
341 ($5,000.) Dollars presented by said petitioner be, and the same is hereby approved.

(Signed) H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

(Endorsed:) No. —. D. Sullivan, Plaintiff in Error *vs.* State of Texas, Defendant in Error. Order allowing writ of error, and approving bond. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, May 19, 1906, R. H. Connerly, Clerk.

Bond on Writ of Error.

Know all men by these presents: That we, D. Sullivan, as principal, and D. J. Sullivan, Geo. W. Littlefield and H. A. Wroe, C. D. Hogan, as sureties, acknowledge ourselves held and firmly bound unto the State of Texas in the full sum of Five Thousand ($5,000.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this the 19th day of May, A. D. 1906.

The condition of the above obligation being that, whereas, the above named plaintiff in error, D. Sullivan, has prosecuted a writ of error, to the Supreme Court of the United States to cause to be reviewed a judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, made and entered by the said Court, in a suit therein pending between D. Sullivan and the State

of Texas, which said judgment was rendered on the 6th day of December, 1905, and became final on the 16th day of May, 1906, by reason of the refusal of the Supreme Court of the State of Texas, on that date, to grant plaintiff in error a re-hearing of its previous order dismissing plaintiff in error's petition for writ of error to the said Supreme Court of the State of Texas.

342 Now, therefore, if the above named plaintiff in error shall prosecute his writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

(Signed) D. SULLIVAN.
D. J. SULLIVAN.
C. D. HOGAN.
GEO. W. LITTLEFIELD.
H. A. WROE.

STATE OF TEXAS, *County of Bexar:*

Before me, the undersigned authority on this day personally appeared D. Sullivan, D. J. Sullivan and C. D. Hogan, known to me to be the persons whose names are signed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this the 19th day of May, 1906.

[SEAL.] (Signed) PETER O'BRIEN,
Notary Public, Bexar County, Texas.

Approved this 19th day of May, 1906, by
(Signed) H. C. FISHER,
Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

THE STATE OF TEXAS *County of Travis:*

I, Jas. P. Hart, Clerk of the District Court in and for said County and State hereby certify that the sureties named in the foregoing bond to-wit D. J. Sullivan, C. D. Hogan, Geo. W. Littlefield and H. A. Wroe, are in my opinion ample and sufficient and that if said Bond were presented to me for approval, I would approve the same.

343 Witness my hand and the seal of office at Austin, Texas, this the 19th day of May A. D., 1906.

[SEAL.] (Signed) JAS. P. HART,
Clerk Dist. Court, Travis County, Texas,
By E. HUPPERTZ, *Deputy.*

(Endorsed:) D. Sullivan, Plaintiff in Error *vs.* State of Texas, Defendant in Error. Supersedeas Bond. Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas. May 19th, 1906. R. H. Connerly, Clerk.

Duplicate.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, between D. Sullivan and the State of Texas wherein was drawn in question the validity of certain statutes of the State of Texas on the ground of their being repugnant to the Constitution of the United States, and a decision was rendered in favor of such their validity, a manifest error hath happened, to the great damage of the said D. Sullivan as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ,
344 so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of May, in the year of our Lord one thousand nine hundred and six.

[SEAL.] (Signed) D. H. HART,
Clerk of the Circuit Court of the United States,
Western District of Texas, 5th Circuit.

Allowed by

(Signed) H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and
for the 3rd Supreme Judicial Dist. of Texas.

(Endorsed:) Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 19th, 1906. R. H. Connerly, Clerk.

Assignment of Errors.

In the Supreme Court of the United States, October Term, A. D. 1906.

D. SULLIVAN, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

Now comes D. Sullivan, plaintiff in error in the above entitled cause, by his attorneys, and says that the Honorable Court of Civil Appeals for the Third Supreme Judicial District of Texas, in affirming the judgment of the District Court of the 26th Judicial District of Texas, has committed error in its opinion and judgment,
345 prejudicial and unjust to the said D. Sullivan, plaintiff in error, in this.—

First.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in holding that a certain Act of the Legislature of the State of Texas, being Chapter Four of the First Called Session of the 27th Legislature, approved September 3rd, 1901, entitled.—"An Act to provide for ascertaining and adjudicating certain claims against or in favor of the State for lands, titles to which are claimed to have emanated from the Spanish or Mexican government, to adjust and settle the rights of the State and the owners or claimants respectively, of such lands, and if found valid to confirm as against the State the right and title of such claimants or owners, and to provide for the patenting of the same when title thereto has been confirmed by suit, or otherwise, and for the recovery thereof by the State when the claimant has no title thereto," is a valid Act, and not in conflict with the Constitution of the United States, because the said Court of Civil Appeals for the Third Supreme Judicial District of Texas should have held that the said Act, as the same is herein enforced against this plaintiff in error, is invalid and void, because in violation of Section 10, Article 1, of the Constitution of the United States, because the said Act, as enforced against plaintiff in error herein impairs the obligation of a valid and subsisting contract between plaintiff *and* error and his privies in title, and the State of Texas, entered into prior to the passage of the said invalid Act of the Legislature, aforesaid, herein enforced against this plaintiff in error, the said valid and subsisting contract which is so impaired by the enforcement of the said invalid Act consisting of the provisions of an Act of the Legislature of the State of Texas, approved February 10th, 1852, providing for a re-survey of the Santa Rosa de Arriba grant, among others, and the acceptance of the provisions of the said Act by this plaintiff in error, and his predecessors in title.

346 Second.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in holding that a certain enactment of the Legislature of the State of Texas, being Section 8, Chapter 11, of the laws of the First Called Session of the 26th Legislature of said State, entitled:—"An act to define the permanent school fund of the State of Texas, to partition the public lands between said fund and the State, and to adjust the account between said fund and said State, to set apart and appropriate to said school fund, in part payment of said account the residue of the public domain of said State, to which the said fund is entitled under section 2, article 7, of the Constitution adopted April 17, 1876, to appropriate the sum of seventeen thousand, one hundred eighty and twenty-seven one hundredths dollars to the permanent school fund from the general revenue not otherwise appropriated, in full payment of the balance due to said fund by the State of Texas, under the Constitution of 1876, to provide for the survey, purchase and lease of said land, and the issuance of patents in certain cases, and providing for suit in Travis County against any person claiming any of the lands belonging to the school fund or any other funds," as the same is herein enforced against this plaintiff in error, is a valid Act and not in contravention of the Constitution of the United States, because the said Court of Civil Appeals for the Third Supreme Judicial District of Texas, should have held that the said Section 8, of the said Act, as the same is herein enforced against this plaintiff in error, is invalid and void, because the same is in violation of the provisions of Section 10, Article 1 of the Constitution of the United States in that the said Section of the said Act, as so enforced, impairs the obligation of a valid and subsisting contract between the plaintiff in error and his privies in title and the State of Texas, entered into prior to the passage of the said invalid Act, the said valid and subsisting contract which is so impaired by the enforcement of
347 the said invalid Act consisting of the provisions of an Act of the Legislature of the State of Texas, approved February 10th, 1852, providing for a re-survey of the Santa Rosa de Arriba grant, among others, and the acceptance of the provisions of the said Act by this plaintiff in error, and his predecessors in title.

Third.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in affirming the judgment of the District Court of the 26th Judicial District of Texas, because the Act of the Twenty-seventh Legislature, Sec. 11, Chapter 4 of the First Called Session, as construed and enforced against this plaintiff in error is void, because in conflict with the Constitution of the United States, in that the said Act as so construed and enforced, impairs the obligation of a valid, subsisting and binding contract between the owners of the Santa Rosa de Arriba grant and the State of Texas, as evidenced by the provisions of an Act of the Legislature of the State of Texas, of date February 10th, 1852, and the survey of the Santa Rosa de

Arriba grant by the official surveyor under and in accordance with the provisions of the said Act of February 10th, 1852, which said contract was entered into prior to the passage of the said Act of the Twenty-seventh Legislature, which, as so construed and enforced by said Court, is an attempt upon the part of the State of Texas to repudiate the said binding and subsisting contract, and to impair the obligation thereof, and is therefore in violation of the Constitution of the United States, and contrary to the provisions of paragraph 1, Section 10, of Article 1 of the Constitution of the United States.

Fourth.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in affirming the judgment of the District Court of the 26th Judicial District of Texas, because the Act of the Twenty-seventh Legislature, Section 11, Chapter 4, of the First Called Session, as construed and enforced by the said Court, impairs
348 the obligation of the valid and subsisting contract between the State of Texas and the owners of the Santa Rosa de Arriba grant, the El Tule and the San Antonio del Encinal grants, under the judgments of 1872 and 1873, and the surveys thereunder.

Fifth.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in affirming the judgment of the District Court of the 26th Judicial District of Texas, because the Act of the Twenty-seventh Legislature, Section 11, Chapter 4, of the First Called Session, as construed and enforced against this plaintiff in error by said court, is void, and contrary to and in violation of the Constitution of the United States, in that it deprives plaintiff in error of his property without due process of law, and without compensation.

Sixth.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in affirming the judgment of the District Court of the 26th Judicial District of Texas, because the said Act of the Twenty-seventh Legislature, Chapter 4, Section 11, as construed and enforced by said court against this plaintiff in error, is in violation of and contrary to the provisions of the Constitution of the United States and of the State of Texas, in that it denies to this plaintiff in error the equal protection of the laws of the land.

Wherefore, plaintiff in error prays that the said judgment of the said Court be reversed, and that such orders may be entered herein, and such directions given as justice may require.

(Signed) J. C. SULLIVAN,
OGDEN & BROOKS,
Attorneys for Plaintiff, D. Sullivan.

(Endorsed:) D. Sullivan, Plaintiff in Error *vs.* State of Texas, Defendant in Error. Assignment of errors. Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas May 19, 1906. R. H. Connerly, Clerk.

28—91

349 *Order Extending Time, &c.*

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

No. 3639.

D. SULLIVAN ET AL., Appellants,
vs.
THE STATE OF TEXAS, Appellee.

For good cause shown to H. C. Fisher, Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the writ of error sued out herein, is hereby extended until the 19th day of August, 1906.

(Signed) H. C. FISHER,
Chief Justice, Court of Civil Appeals,
3rd Sup. Jud. Dist. of Tex.

(Endorsed:) Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas, Jun. 18, 1906. R. H. Connerly, Clerk.

Præcipe of Pl'ff in Error.

In the Court of Civil Appeals Third Supreme Judicial District of Texas.

D. SULLIVAN, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

To the Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas:

In the above entitled cause, in making the transcript of the record therein, you are requested to include the following portions of the record, as being those, and only those, which are necessary to the hearing of the cause by the Supreme Court of the United
350 States:

1. Plaintiff's original petition. (Trans. p. 1.)
2. Application of D. Sullivan for leave to intervene. (Trans. p. 5.)
3. Order granting D. Sullivan leave to intervene. (Trans. p. 6.)
4. Answer of D. R. Fant. (Trans. p. 7.)
5. Answer of D. Sullivan. (Trans. p. 8.)
6. Judgment. (Trans. p. 8.)
7. Motion for new trial. (Trans. p. 14.)
8. Order on motion. (Trans. p. 22.)
9. The following portions of the statement of facts: (*a*) Original Santa Rosa de Arriba grant, together with statement showing that it

was introduced by both parties, (Trans. p. 56), (*b*) Map of the Santa Rosa de Arriba grant, (Trans. P. 58) (*c*) Confirmation of said grant by the State of Texas, (Trans. P. 61) (*d*) Field notes of a re-survey of said grant by Felix A. Von Blucher, together with caption showing that same were introduced by both parties, including all matter, beginning at letter "*c*" on page 62 of the Transcript, and ending with the words "Commissioner of the General Land Office," on page 62d of the Transcript, (*e*) Map of re-survey by Blucher, (*f*) The facts admitted upon the trial, as found on page 177 of the Transcript (*g*) That portion of F. M. Maddox's testimony, beginning with the words "the witness was here," on the 6th line, and ending with the words "taken from the original grant," on the 7th line,—Trans. p. 248, (*h*) That portion of John A. Dix's testimony, found on page 250, which ends in the middle of next to the last line on said page, with the words "land district there," (*i*) That portion of N. L. Word's testimony, beginning with the words "I do no- know," on the first line, and ending with the words "early in the 80's," on the 8th line,—Trans. p. 256, (*j*) Original grant Map marked "Map Z" (*k*) Map showing boundaries, as fixed by the judgment, marked "Map X."

351 10. Appeal bond from the District Court (Trans. p. 258).

11. Assignments of error in the District Court and Court of Civil Appeals, (Trans. p. 270).

12. Judgment of the Court of Civil Appeals affirming judgment of the District Court.

13. Opinion of the Court of Civil Appeals on original hearing.

14. D. Sullivan's motion for re-hearing.

15. Order overruling motion for re-hearing.

16. Opinion on motion for re-hearing.

17. Order of Supreme Court dismissing cause for lack of jurisdiction.

18. Order overruling motion for re-hearing in Supreme Court.

19. Petition for writ of error from the Supreme Court of the United States.

20. Assignments of error in the Supreme Court of the United States.

21. Order allowing writ of error, and approving bond.

22. Bond on writ of error.

23. Writ of error from Supreme Court of the United States.

24. Citation on writ of error and acceptance thereof by Attorney General.

You are further requested that, in making said Transcript of the record, you will omit the following papers and testimony, because the same are unnecessary to the hearing of the cause by the Supreme Court of the United States, in this.—That the papers and testimony which you are hereby requested to omit, relate solely to the issue which was tried in the State District Court as to whether the boundaries of the Santa Rosa de Arriba grant, according to the re-survey thereof by Felix A. Von Blucher, in 1859, conformed to and were identical with the boundaries of the original grant,

352 as made and surveyed by the State of Tamaulipas, this being an issue which, in this case, will not be heard reviewed, or de-

termined by the Supreme Court of the United States, and it is deemed proper that all papers and evidence relating solely to that issue and having no bearing on the questions presented to the Supreme Court of the United States, should be omitted from the Transcript of the record, the said portions of said record to be omitted being as follows:—

1. San Antonio del Encinal grant, and field notes thereof, (Trans. p. 23).
2. Plot of the San Antonio del Encinal grant, (Trans. P. 25).
3. Judgment of the District Court of Travis County, Texas, confirming the San Antonio del Encinal grant, (Trans. p. 26).
4. Sketch of re-survey of said grant by J. L. Dougherty, (Trans. P. 27).
5. Field notes of corrected survey of said grant, by Salinas, (Trans. P. 30).
6. Plot of the said grant, (Trans. p. 31).
7. El Tule grant, and the field notes thereof, (Trans. P. 32).
8. Map of the El Tule grant, (Trans. p. 34).
9. Judgment of the District Court of Travis County, Texas, confirming the El Tule grant, (Trans. P. 36).
10. Field notes of a re-survey of said grant by Felix A. Von Blucher, (Trans. P. 37).
11. Maps (Trans. p. 39).
12. Surveys Nos. 155 and 156, Texas Mexican R. R. (trans. p. 40).
13. Loma Blanca grant, (Trans. p. 41).
14. Plot of Loma Blanco grant, (Trans. p. 42).
15. El Paisano grant, (Trans. p. 43).
16. Plat of El Paisano grant, made by Antonio Canales, (Trans. p. 44).
17. Plot of a re-survey of said grant made by Blucher in 1854, (Trans. p. 46).
18. James Forester survey No. 5, (Trans. p. 47).

353 19. Map. (Trans. p. 49.)

20. Tio Ayala grant (Trans. P. 50).
21. Sketch of surveyor General (Transcript, p. 51).
22. Field notes of re-survey by Eivet (Trans. P. 52).
23. Patent, (Trans. P. 53).
24. Map (Trans. p. 55).
25. Santa Rosa de Abajo, (Trans. p. 64).
26. Map (Trans. p. 65).
27. Field notes of survey of Santa Rosa de Abajo by Cocke in 1876, (Trans. p. 67).
28. Map. (Trans. p. 69.)
29. Field notes and patents of various grants and surveys, (Trans. p. 70).
30. Map and explanation by J. J. Cocke (Transcript, p. 72).
31. El Paistle grant (Trans. p. 73).
32. Field notes of said grant by H. M. Fields, (Trans. P. 73).
33. Map, by H. M. Fields (Trans. p. 74).
34. La Parra grant (Trans. p. 76).

35. Translation of original grant, (Trans. p. 76).
36. Map, (Trans. p. 78).
37. Map, (Trans. P. 79).
38. Deed from Domingo de la Garza, (Trans. p. 80).
39. Map showing original grant to Garza (Trans. p. 83).
40. Las Motas and El Palmitto grants, (Trans. P. 85).
41. Survey by Fuente, (Trans. P. 85).
42. Field notes of re-survey by Cocke in 1879, (Trans. p. 85).
43. Field notes of Palmitto by Fuente, (Trans. p. 86).
44. Field notes of re-survey of Palmitto by Cocke, (Tranz. p. 86).
45. Map, (Trans. p. 87).
46. Map, (Trans. p. 88).
47. Map (Trans. P. 89).
48. Map (Trans. p. 90).

354 49. Las Barrosas grant (Trans. P. 91).
50. Map. (Trans. p. 92.)
51. Field notes of re-survey by Fields, (Trans. P. 93).
52. Map accompanying said field notes, (Trans. p. 96).
53. Las Finados grant, (Trans. p. 97).
54. Field notes of survey by Surveyor General Canales, (Trans. p. 97).
55. Field notes of re-survey by Fields, (Trans. p. 97).
56. Map accompanying the same, (Trans. p. 100).
57. Map (Trans. P. 101).
58. La Barreta grant, (Trans. p. 102).
59. Field notes by Surveyor General Fuente, (Trans. p. 102).
60. Map accompanying the same (Trans. p. 103).
61. Map (Trans. p. 104).
62. Field notes of Cocke, (Trans. p. 105).
63. Report of J. J. Dix and F. A. Von Blucher, (Trans. p. 107).
64. Report of F. M. Maddox, Surveyor, (Trans. p. 118).
65. Statement of maps to be sent up with record, (Trans. p. 176).
66. Testimony of A. M. French, (Trans. P. 178).
67. " " Martin Hanson " 199
68. " " Daniel Johnson " 200
69. " " C. Rodriguez " 202
70. " " Fernando Gonzales " 207
71. " " Pedro Peredes " 213
72. " " A. M. French " 218
73. " " Chas. Hyman " 220
74. " " E. H. East " 221
75. " " John G. Kenedy " 222
76. " " James B. Wells " 230
77. " " W. B. Barton " 233
78. The testimony of F. M. Maddox, (Trans. p. 235), except as hereinbefore stated.

355 79. The testimony of John A. Dix, (Trans. p. 250), except as hereinbefore stated.

80. The testimony of N. L. Word (Trans. p. 254), except as hereinbefore stated.

81. Agreement of counsel and approval of court, (Trans. p. 257).
82. Bills of exceptions, (Trans. p. 256).
83. Bills of costs, (Trans. p. 280).
84. Clerk's Certificate, (Trans. p. 282).
85. Original Map of Cocke and Blucher, Marked "Exhibit B."
86. Map of General Land Office, marked "Exhibit K."
87. French's Map, marked "E."
88. Maddox's Map, marked "C."
89. Blucher's Map, marked "A."
90. Map made by Martin Hanson, marked "Map L."
91. Photographic map, marked "Map H."

(Signed) J. C. SULLIVAN,
OGDEN & BROOKS,
Attorneys for Plaintiff in Error.

Copy of the above præcipe has this day been lodged in the office of the Attorney General of the State of Texas and further service thereof is hereby waived.

(Signed) R. V. DAVIDSON,
Att'y Gen'l.

(Endorsed:) Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas, Jul- 17, 1906. R. H. Connerly, Clerk.

356 *Opposition of Def't in Error to Præcipe.*

In the Court of Civil Appeals of Texas, Third Supreme Judicial District, at Austin.

No. 3639.

D. SULLIVAN ET AL., Appellants,
v.
THE STATE OF TEXAS, Appellee.

To the Clerk of said Court:

DEAR SIR: In making up the record in the above entitled cause for appeal to the Supreme Court of the United States upon Writ of Error, please include all the proceedings in the District Court of Travis County, in the Court of Civil Appeals of Texas, above mentioned, and in the Supreme Court of Texas, especially the following in the transcript of proceedings in the trial court:—

1. San Antonio del Encinal grant, and field notes thereof, (Trans. p. 23).
2. Plot of the San Antonio del Encinal grant, (Trans. p. 25).
3. Judgment of the District Court of Travis County, Texas, confirming the San Antonio del Encinal grant, (Trans. p. 26).
4. Sketch of re-survey of said grant by J. L. Dougherty, (Trans. p. 27).

5. Filed notes of corrected survey of said grant, by Salinas, (Trans. p. 30).
6. Plot of the said grant, (Trans. p. 31).
7. El Tule grant, and the field notes thereof, (Trans. p. 32).
8. Map of the El Tule grant, (Trans. p. 34).
9. Judgment of the District Court of Travis County, Texas, confirming the El Tule grant, (Trans. p. 36).
10. Field notes of a re-survey of said grant, by Felix A.
357 Von Blucher, (Trans. p. 37).
11. Maps, (Trans. p. 39).
12. Surveys Nos. 155 and 156, Texas Mexican R. R. (Trans. p. 40).
13. Loma Blanc*e* grant, (Trans. p. 41).
14. Plot of Loma Blanca grant, (Trans. p. 42).
15. El Paisano grant, (Trans. p. 43).
16. Plat of El Paisano grant, made by Antonio Canales, (Trans. p. 44).
17. Plot of re-survey of said grant made by Blucher in 1854. (Trans. p. 46.)
18. James Forrester survey No. 5, (Trans. p. 47).
19. Map, (Trans. p. 49).
20. Tio Ayala grant, (Trans. p. 50).
21. Sketch of surveyor General (Trans. p. 51).
22. Field notes of re-survey by Eivet, (Trans. p. 52).
23. Patent, (Trans. p. 53).
24. Map (Trans. p. 55).
25. Santa Rosa de Abajo, (Trans. p. 64).
26. Map, (Trans. p. 65).
27. Field notes of survey of Santa Rosa de Abajo by Cocke in 1876, (Trans. p. 67).
28. Map, (Trans. p. 69).
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31. El Paistle grant, (Trans. p. 73).
32. Field notes of said grant by H. M. Fields, (Trans. p. 73).
33. Map by H. M. Fields (Trans. p. 74).
34. La Parra grant (Trans. p. 76).
35. Translation of original grant, (Trans. p. 76).
36. Map (Trans. p. 78).
37. Map, (Trans. p. 79).
358 38. Deed from Domingo de la Garza (Trans. p. 80).
39. Map showing original grant to Garza, (Trans. p. 83).
40. Las Motas and El Palmitto grants, (Trans. p. 85).
41. Survey by Fuente (Trans. p. 85).
42. Field notes of re-survey by Cocke in 1879 (Trans. p. 85).
43. Field notes of Palmitto by Fuente (Trans. p. 86).
44. Field notes of re-survey of Palmitto by Cocke, (Trans. p. 86).
45. Map, (Trans. p. 87).
46. Map, (Trans. p. 88).

47. Map, (Trans. p. 89).
48. Map (Trans. p. 90).
49. Las Barosas grant, (Trans. p. 91).
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52. Map accompanying said field notes, (Trans. p. 96).
53. Los Finados grant, (Trans. p. 97).
54. Field notes and survey by Surveyor General Canales, (Trans. p. 97).
55. Field notes of re-survey by Fields, (Trans. p. 97).
56. Map accompanying the same, (Trans. p. 100).
57. Map, (Trans. p. 101).
58. La Barreta grant, (Trans. p. 102).
59. Field notes by Surveyor General Fuente, (Trans. P. 102).
60. Map accompanying the same, (Trans. p. 103).
61. Map, (Trans. p. 104).
62. Field notes of Cocke, (Trans. p. 105).
63. Report of J. J. Dix and F. A. Von Blucher, (Trans. p. 107).
64. Report of F. M. Maddox, Surveyor, (Trans. p. 118).
65. Statement of maps to be sent up with record, (Trans. p. 176).
66. Testimony of A. M. French, (Trans. p. 178).

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67. Testimony of Martin Hanson (Trans. P. 199).
68. " " Daniel Johnson " 200
69. " " C. Rodriguez " 202
70. " " Fernando Gonzales " 207
71. " " Pedro Peredes " 213
72. " " A. M. French " 218
73. " " Chas. Hyman 220
74. " " E. H. East, (Trans. p. 221).
75. " " John G. Kenedy 222
76. " " James B. Wells 230
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78. The testimony of F. M. Maddox (Trans. p. 235) except as hereinbefore stated.
79. The testimony of John A. Dix, (Trans. p. 250), except as hereinbefore stated.
80. The testimony of N. L. Word, (Transcript p. 254), except as hereinbefore stated.
81. Agreement of counsel and approval of court, (Trans. p. 257).
82. Bills of exception, (Trans. p. 356).
83. Bills of costs, (Trans. p. 280).
84. Clerk's Certificate, (Trans. p. 282).
85. Original Map of Cocke and Blucher, Marked "Exhibit B."
86. Map from General Land Office, marked "Exhibit K."
87. French's Map, marked "E."
88. Maddox's Map, marked "C."
89. Blucher's Map, marked "A."

90. Map made by Martin Hanson, marked "Map L."
91. Photographic map, marked "Map H."

Respectfully,

R. V. DAVIDSON,
Attorney General,
W. E. HAWKINS,
Assistant Attorney General,
For the State of Texas, Defendant in Error.

360 (Endorsed:) 3639 D. Sullivan *et al., vs.* The State of Texas. Request by Def't in error that record be made to include all proceedings. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Jul- 17, 1906. R. H. Connerly, Clerk.

Additional Præcipe.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

D. SULLIVAN, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

In addition to the portions of the record mentioned in the præcipe heretofore filed with you, in the above case, you are requested to include in the transcript of the record, for the hearing before the Supreme Court of the United States, the following:—

1. The Attorney General's opposition to appellant's præcipe.
2. Order of the Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, requiring entire record to be sent up.
4. Order of the Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas enlarging time for making up and filing transcript.
4. Order of the Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, directing certain original maps to be sent up with the transcript.

(Signed) J. C. SULLIVAN,
OGDEN & BROOKS,
Attorneys for Plaintiff in Error, D. Sullivan.

(Endorsed:) Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin Texas, July 17, 1906. R. H. Connerly, Clerk.

361 *Order Sending up Original Maps.*

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

D. SULLIVAN, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

On motion of the plaintiff in error, it is ordered that the Clerk of this Court transmit to the Clerk of the Supreme Court of the United States, at Washington, D. C. the following original exhibits in this suit, to be by him safely kept, and returned to this court upon the final determination of the writ of error in this cause in the said Supreme Court of the United States, namely:—

1. Map from the General Land Office, dated in 1875, marked "Map E."
2. Map made by Felix A. Von Blucher in 1869, marked "Map F."

(Signed) H. C. FISHER,
Chief Justice Court Civil Appeals, 3rd District.

(Endorsed:) Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas Jul- 17 1906. R. H. Connerly, Clerk.

Order Sending up Original Maps.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

D. SULLIVAN, Plaintiff in Error,
v.
STATE OF TEXAS, Defendant in Error.

On motion of the plaintiff in error it is ordered that the Clerk of this Court transmit to the Clerk of the Supreme Court of the United States, at Washington, D. C., the following original exhibits
362 in this suit, to be by him safely kept, and returned to this court upon the final determination of the writ of error in this cause in the said Supreme Court of the United States, namely:—

Cocke and Blucher's Map marked "Exhibit B."
Map from General Land Office marked "Map K."
French's Map, marked "D."
Maddox's Map, marked "C."
Dix and Blucher's Map, marked "A."
Map from General Land Office, marked "Map E."
Map made by Blucher, marked "Map F."
Original Grant Map, marked "Map Z."

Map made by Martin Hanson Jr., marked "Map L."
Photographic Map marked "Map H."

(Signed) H. C. FISHER,
Chief Justice of the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

(Endorsed:) Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas Jul- 17, 1906. R. H. Connerly, Clerk.

Order Directing Entire Proceedings to Go Up.

D. SULLIVAN, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

Error from the District Court of Travis County.

In due form the plaintiff in error has requested that in making up the transcript certain parts of the record on file in this Court be omitted. Without determining whether there is or not merit in the request, it is refused for the reason that I decline to undertake the task of going through the record. Therefore, the clerk in making up the transcript will copy the original record, with the exception of certain original maps attached thereto, which will be sent up as a part of the record to be returned as file papers
363 in this Court upon permission of the Supreme Court of the United States when said cause is finally determined.

(Signed) H. C. FISHER,
Chief Justice Court of Civil Appeals, Third Supreme Judicial District of Texas.

(Endorsed:) Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas Jul- 17, 1906. R. H. Connerly, Clerk.

Petition to Sup. Court U. S.

Petition for Writ of Error.

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

D. SULLIVAN, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

To the Honorable H. C. Fisher, Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas:

Now comes, D. Sullivan, plaintiff in error in the above entitled cause, and would show unto this Honorable Court that, by a judg-

ment of the District Court of the 26th Judicial District of Texas, Travis County, Texas, entered on the 14th day of November, 1904, and by a judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, affirming the said judgment of the District Court, entered on the 6th day of December, 1905, and by a judgment of the said Court of Civil Appeals for the Third Supreme Judicial District of Texas, overruling plaintiff in error's motion for rehearing, of date the 21st day of March, 1906, and by a judgment of the Supreme Court of Texas, entered on the 25th day of April, 1906, dismissing plaintiff in error's petition for
364 writ of error to said court, and by a judgment of the said Supreme Court of the State of Texas, dated the 16th day of May, 1906, refusing to grant plaintiff in error's petition for rehearing,—thereby making the said judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, final, and thereby making the said Court of Civil Appeals for the Third Supreme Judicial District of Texas the highest court of the said State of Texas in which a decision in said suit could be had, manifest error has occurred, greatly to the damage of the plaintiff in error, whereby petitioner feels aggrieved.

That in the record and proceedings it will appear that there was drawn in question the validity of certain statutes of the State of Texas, on the ground of repugnancy to the Constitution of the United States, in this. That an Act of the Legislature of the State of Texas, approved September 3rd, 1901,—passed at First Called Session of the 27th Legislature of the State of Texas,—Chapter IV, entitled, "An act to provide for ascertaining and adjudicating certain claims against or in favor of the State for lands, titles to which are claimed to have emanated from the Spanish or Mexican Government, to adjust and settle the rights of the State and the owners or claimants, respectively, of such lands, and if found valid to confirm as against the State, the right and title of such claimants or owners, and to provide for the patenting of the same when title thereto has been confirmed by suit, or otherwise, and for the recovery thereof by the State when the claimant has no title thereto," as the said Act is enforced against the plaintiff in error in this case is in contravention of section 1, Article 10 of the Constitution of the United States, in that it impairs the obligation of a valid and subsisting contract between the plaintiff in error and his privies in title and the State of Texas, entered into prior to the passage of the said invalid Act of the Legislature herein enforced against this plaintiff in error, the said valid and subsisting contract which is so
365 impaired by the enforcement of the said invalid Act, consisting of the provisions of an Act of the Legislature of the State of Texas, Approved February 10th, 1852, providing for a resurvey of the Santa Rosa de Arriba grant, among others, and the acceptance of the provisions of the said Act by this plaintiff in error, and his predecessors in title, and because the said Act, as construed and enforced against this plaintiff in error, deprives him of his property without due process of law, and without compensation, and

deprives this plaintiff in error of the equal protection of the laws of the land, and the decision was in favor of the validity of the said State law.

That Section 8, Chapter 11, of an Act passed at the First Called Session of the 26th Legislature, approved February 23rd, 1900 entitled.—"An act to define the permanent school fund of the State of Texas, to partition the public lands between said fund and the State, and to adjust the account between said fund and said state, to set apart and appropriate to said school fund, in part payment of said account, the residue of the public domain of said state, to which the said fund is entitled under Section 2, article 7, of the Constitution, adopted April 17, 1876, to appropriate the sum of seventeen thousand, one hundred eighty and twenty-seven one hundredths dollars to the permanent school fund from the General Revenue not otherwise appropriated, in full payment of the balance due to said fund by the State of Texas, under the Constitution of 1876, to provide for the survey, purchase and lease of said land, and the issuance of patents in certain cases, and providing for suit in Travis County against any person claiming any of the lands belonging to the school fund or any other funds," as the same is herein enforced against plaintiff in error is in contravention of Section 1, Article 10 of the Constitution of the United States
366 because the said Section of the said Act, as herein enforced, impairs the obligation of a valid and subsisting contract between this plaintiff in error and his privies in title and the State of Texas, entered into prior to the passage of the said invalid Act of the Legislature, the said valid and subsisting contract which is so impaired by the enforcement of said invalid Act of the Legislature consisting of the provisions of an Act of the Legislature of the State of Texas, approved February 10th, 1852, providing for a re-survey of the Santa Rosa de Arriba grant, among others, and the acceptance of the provisions of the said Act by this plaintiff in error and his predecessors in title, and because the said Act, as construed and enforced against this plaintiff in error, deprives him of his property without due process of law, and without compensation, and deprives this plaintiff in error of the equal protection of the laws of the land, and the decision was in favor of the validity of the said State law.

All of which is fully apparent in the record and proceedings of the case, and specifically set forth in the assignment of errors filed herewith.

Wherefore, plaintiff in error prays for an order allowing petitioner to prosecute a writ of error to the Honorable Supreme Court of the United States, under and in accordance with the laws of the United States, in that behalf made and provided, and, also that an order be made fixing the amount of a bond for a supersedeas in the said cause, and for such other orders and process as may cause the same to be reviewed and corrected by the Honorable Supreme Court of the United States.

(Signed) J. C. SULLIVAN,
OGDEN & BROOKS,
Attorneys for Plaintiff in Error, D. Sullivan.

Writ of error allowed, with supersedeas, upon the plaintiff in error, D. Sullivan, giving bond, according to law, in the sum
367 of Five Thousand Dollars.

Dated the 19th day of May, A. D. 1906.

(Signed) H. C. FISHER,
Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

(Endorsed:) Petition for Writ of Error to Court of Civil Appeals Third Supreme Judicial District of Texas. D. Sullivan, Plaintiff in Error *vs.* State of Texas, Defendant in error. Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas May 19, 1906. R. H. Connerly, Clerk.

Bill of Costs.

Filing Record	$.50
Docketing Cause	.50
Appearances	1.00
Filing Briefs	.80
Filing and Entering Motions	.70
Orders	3.00
Filing 23 Extra Papers	2.30
Continuance	.20
Judgment	1.00
Taxing Costs	.50
Mandate	1.50
Recording Opinion	5.40
Certified Copy Bill of Costs	.75
Certified Copy Orders to Sup. Crt. Texas	2.00
Notices	4.50
Copy of Motion	2.50
Issuing Precept	1.00
	$28.15
368 Am't Brought Forward	$28.15
Sheriff's Fees	1.00
Supreme Court Costs	8.05
Transcript from Court of Civil Appeals	282.75
Total	$319.95

Clerk's Certificate.

I, R. H. Connerly, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, hereby certify that the foregoing 367 pages contain true and correct copies of all proceedings had in the District Court of Travis County, in this Court and in the Supreme Court of Texas, together with such original maps as were included in and sent up with the transcript from the District

Court of Travis County, in the cause in this Court entitled, D. Sullivan *et al.*, Appellants, *vs.* the State of Texas, Appellee, Cause No. 3639, as the same appear from the files of said cause in this Court. I further certify that the two pages hereafter following are, respectively, the original citation in error and the original writ of error issued in said cause.

Witness my hand and the seal of said Court, at office, in the City of Austin, this the 30th day of July, A. D. 1906.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk.*

369 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas, wherein D. Sullivan is plaintiff in error and you are the defendant in error, to show cause, if any there be why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable H. C. Fisher, Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas, this 19th day of May, in the year of our Lord one thousand nine hundred and six.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

A copy of the within citation received this 19th day of May, A. D. 1906 at the office of the Attorney General of the State of Texas.

W. E. HAWKINS,
First Office Assistant and Acting Attorney General of Texas.

[Endorsed:] D. Sullivan, Plaintiff in Error *vs.* State of Texas, Defendant in Error. Citation in Error. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, May 19 1906 R. H. Connerly, Clerk.

370 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, between D. Sullivan and the State of Texas wherein was drawn in question the validity of certain Statutes

of the State of Texas on the ground of their being repugnant to the Constitution of the United States, and a decision was rendered in favor of such their validity a manifest error hath happened, to the great damage of the said D. Sullivan as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of May, in the year of our Lord one thousand nine hundred and six.

[Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk of the Circuit Court of the United States,
Western District of Texas, 5th Circuit.

Allowed by
H. C. FISHER,
Chief Justice of the Court of Civil Appeals
in and for the 3d Supreme Judicial District of Texas.

[Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, May 19 1906 R. H. Connerly, Clerk.

Endorsed on cover: File No. 20,353. Texas court of civil appeals, 3d supreme judicial district. Term No. 91. D. Sullivan, plaintiff in error, *vs.* The State of Texas. Filed August 27, 1906. File No. 20,353.

Office Supreme Court, U. S.
FILED.
NOV 5 1907
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1907.

No. 91.

D. SULLIVAN, PLAINTIFF IN ERROR,

VS.

THE STATE OF TEXAS.

In error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

BRIEF FOR PLAINTIFF IN ERROR.

CHAS. W. OGDEN,
J. C. SULLIVAN,
For Plaintiff in Error

G. F. Sigmund, Printer, 116 Main Plaza, San Antonio

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1907.

No. 91.

D. SULLIVAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

In error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE:

On the 24th day of September, 1902, the State of Texas (Defendant in Error), acting through its Attorney General, brought an action in the State District Court of Travis County, Texas, against D. R. Fant, to recover some portion (undefined and undescribed in the petition) of a tract of land situated in Hidalgo County, Texas, containing 55,500 acres. The plaintiff in this action alleged in its petition that the defendant was in possession of the entire 55,500 acres of land, which is in said pleading particularly described by metes and bounds. That the defendant owned six and one-half leagues thereof, and that the plaintiff owned and was entitled to recover the remainder (Transcript, pages 1 to 3).

The defendant, D. R. Fant, purchased the land in controversy in 1882, and in 1893, nearly ten years before the filing of this suit, gave a mortgage on said land to D. Sullivan. On April 5, 1904, D. Sullivan, the Plaintiff in Error, acquired all right, title and interest of the defendant, D. R. Fant, in and to the land in controversy; and on May 5, 1905, Plaintiff in Error, D. Sullivan, applied for and obtained leave to intervene in said cause as a party defendant (Transcript, page 4).

A trial of the case was had in the District Court of Travis County, Texas, on the fourth day of November, 1902, and resulted in a judgment in favor of the State for three several tracts of land, containing, in the aggregate, 13,085 66-100 acres of land (Transcript, pages 5-9). On December 8, 1904, the two defendants filed a motion for a new trial (Transcript, page 9), which was on the same date overruled (Transcript, page 20). D. Sullivan, the Plaintiff in Error herein, appealed from the judgment of the District Court to the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas, and in that Court the judgment of the District Court was affirmed, on the sixth day of December, 1905 (Transcript, page 158). On the 11th day of December, 1905, Plaintiff in Error filed a motion for re-hearing in the said Court of Civil Appeals, wherein the Federal question which will be presented to this Court was raised (Transcript, pages 166-169). On the 21st day of March, 1906, the Court of Civil Appeals handed down an opinion in which it considered the Federal question presented by the motion for re-hearing, and decided the same adversely to the Plaintiff in Error, and overruled the motion for re-hearing (Transcript, pages 170-172). On the 17th day of July, 1906, the Plaintiff in Error filed his petition for a Writ of Error to the Supreme Court of the State of Texas (Transcript, pages 172-210), which was in the said Supreme Court of Texas, on April 25, 1906,

dismissed for want of jurisdiction (Transcript, page 210), and thereby the judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas became final, as the judgment of the highest court of the State having jurisdiction of the cause. The case has been brought here by Writ of Error, allowed by H. C. Fisher, Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas (Transcript, page 212).

The questions involved in this case which will be presented to this Court for its decision, and the manner in which these questions are raised, will appear from the following quotations from the two opinions handed down in the case by the Court of Civil Appeals, and the statements supplementing such quotations.

In the opinion on the original hearing, the Court of Civil Appeals says:

> " . . . . . Appellants' claim to the "land in controversy emanates from the Mexican "grant of sixty and one-half leagues to Pedro de la "Garza, made in 1832, which was confirmed by an act "of the Legislature of the State of Texas on the 10th "day of February, 1852. This act provides 'that it
>
> " 'shall be the duty of those claiming any of the
> " 'lands named in this Act to have the same sur-
> " 'veyed by the district or county surveyor of the
> " 'county in which the same may be situated, and
> " 'upon the return of the field notes thereof to the
> " 'general land office, the commissioner is hereby
> " 'authorized and required to have the same plotted
> " 'on the maps of his office, and issue patents for
> " 'the same in accordance with existing laws, pro-
> " 'vided that no patent shall issue for a less amount
> " 'than the original grant, that the owners of said
> " 'land shall be required to pay the taxes due on
> " 'the same from the date of the organization of
> " 'the respective counties herein mentioned, which
> " 'taxes shall be paid and legal vouchers for the
> " 'same exhibited to the commissioner of the gen-
> " 'eral land office before the patent for the same
> " 'shall issue.'
>
> "In pursuance to this provision a survey was made "by Felix A. Von Blucher, deputy district surveyor of

"Cameron Land District, in May, 1859, the field notes "of which, with map or sketch accompanying same, "were filed in the general land office August 5th, 1869, "having on them the following endorsements:—

" 'File 545 San Patricio 1st Class. Field notes
" '8 leagues.
" 'Pedro de la Garza, filed Aug. 5, 1869.
" 'It appears according to Antonio Garza field
" 'notes 1-556 that these field notes are "correct"
" '(evidently for "corrected"), but not returned yet.
" 'April 6-71 M. Stakeman, confirmed for 6½
" 'leagues.
" 'Closes partly all but the approximate arrear
" 'found with opportioning errors is 267, 552, 959
" 'sq. vrs. equals 10 Leagues 17½ Labors or
" '55, 252, 959 sq. vrs. too much.
" 'Aug. 21, '69, Richardson $2.'

"The tract of land described in plaintiff's petition, "a part of which it sues for in this action, is substan- "tially the same as that described in the field notes of "Blucher. This land has never been patented by the "State of Texas. The Mexican grant was made by the "State of Tamaulipas for 6½ leagues of pasture land, "and is in the name of Santo Rosa de Arriba. The land "embraced in this original grant was surveyed by An- "tonio Canales, surveyor general for the State of "Tamaulipas, December 5th, 1832, and the field notes "made out, with a map accompanying same, showing "the boundaries and configuration thereof and the quan- "tity to be 6 leagues, 20, 782, 500 sq. vrs. The survey "made by Blucher contains 10 leagues and 17½ labors "of land . . . . . " (Transcript, pages 161- "162).

" . . . The survey provided for in the act of "confirmation was to be made of the land originally "granted by the Mexican authorities, and could not "legally include any other land. (Clark vs. Hill, 67 "Texas, 145-6). And if the survey caused to be made "by the owners of the grant in this case under the act "of confirmation included other or more land than the "original grant and survey made by virtue thereof, it "would be void as to such other other land or excess." (Transcript, page 162).

On the trial in the District Court, both the plaintiff and the defendant introduced in evidence the original grant by the State of Tamaulipas to Pedro de la Garza (Transcript,

page 29). Also the Act of the Legislature confirming the same and providing for a re-survey thereof (Transcript, page 31). Also the field notes and map of the re-survey made by Von Blucher in 1859 (Transcript, page 32).

The field notes of the re-survey of the grant by Felix A. Von Blucher, the Official Surveyor, read as follows:

"The State of Texas, District of Cameron:
Survey No. 1.

"Field notes of a survey of Eight leagues and twelve "labors of land made for Wm. G. Hale and F. J. Parker "the assignees of Pedro de la Garza, this being the "quantity of land to which they are entitled by virtue "of a grant from the State of Tamaulipas dated on the "3rd day of July, A. D. 1834. Surveyed in accordance "with an act of the Legislature of the State of Texas, "approved Feby. 10th, 1852, and entitled 'An Act to "relinquish the right of the State to certain lands "therein named this being part of confirmation num-"bered 103 for County of Starr in said Act.'

"Said Survey is No. 1, fronting on the right margin "of the Olmos Creek, situated in Hidalgo County about "ninety miles northwest of Brownsville and is called "'Santa Rosa.' Beginning at a post and mound of "stones on the right margin of the Olmos Creek, about "100 varas below the crossing of the road leading from "San Patricio to Brownsville for the northeast corner "designated in the original title as Lindero del Alcatras "from which a mesquite marked X bears west 100 varas "and from which the southwest corner of a survey in "the name of Leonards Lengoria de la Garza called "El Rincon del Grullo bears north 75½ East 3260 "varas; thence south at 660 varas crossed Brownsville "road bearing S. by E. at 7700 varas, the said road runs "S. S. W.at 8000 varas set post in mound; east 1200 "varas, to a post in mound; thence south 1200 varas, "to a post from which a mesquite marked X bears N. "30 degrees E. 5 varas; thence west 1200 varas to a post "from which a mesquite marked X bears North 22½ "west 49 varas; thence south at 430 varas entered La-"goon at 550 varas left Lagoon at 1840 varas marked "oak for line tree at 4950 varas marked . . . . . "oak 2 varas to the west at 7400 varas crossed the said "Brownsville road running south by east at 8400 varas "Set post in mound for the South east corner desig-"nated in the Original title as "Lindero de San Fran-

"cisco," from which a live oak in a mott marked XX "bears S. 58 degrees E. 606 varas. Thence west at "10420 varas original line tree in mott at 16900 varas "set post for the southwest corner designated in the "original title as 'Lindero del Sacramento.' Thence "north at 4300 varas entered Encinal timber at 8360 "varas passed between two large Live Oaks bearing "marked of the Original survey at the western end of "the Charco del Tule at 13760 varas a stone mound on "the southern margin of the Olmos Creek for the north- "west corner designated in the original title as 'Lin- "dero de San Antonio del Salto' from which a mesquite "on the northern margin of the said creek bears N. "27½ E. Thence with the right margin of the said "Olmos Creek and its meanders down stream north "80 degrees East 160 varas S. 84 degrees E. 480 varas. "S. 56 E. 468 vrs. S. 87 E. 142 vrs. N. 87 E. 142 vrs. N. "46 E. 715 vrs. N. 74 E. 145 vrs. S. 47½ vrs. E. 172 "vrs. S. 87 E. 180 vrs. N. 48½ W. 197 vrs S. "86½ E. 120 vrs. S. 52½ E. 180 vrs. N. 55. E. "115 vrs. N. 73 E. 310 vrs. S. 80 E. 168 vrs. S. 48½ "E. 300 vrs. S. 77 E. 125 vrs. N. 61½ E. 140 vrs. "N. 36 E. 100 vrs. N. 57 E. 252 vrs. S. 55½ E. 214 "vrs. S. 81½ E. 340 vrs. N. 76½ E. 484 "vrs. S. 52½ E. 136 vrs. N. 76¾ E. 285 vrs. "N. 43½ E. 160 vrs. N. 18½ E. 205 vrs. "S. 69 E. 325 vrs. N. 74½ E. 100 vrs. N. 66. 120 "vrs. N. 29 E. 370 vrs. S. 61½ E. 135 vrs. S. 36 E. "336 vrs. N. 57 E. 275 vrs. N. 3 E. 120 vrs. N. 13½ "W. 508 vrs. N. 49 E. 111 vrs. East 255 vrs. N. 42½ "E. 295 vrs. N. 8½ W. 215 vrs. N. 51½ W. 319 vrs. "N. 76 E. 243 vrs. N. 29 E. 610 vrs. N. 10 E. 635 "vrs. S. 80 E. 70 vrs. S. 64 E. 300 vrs. N. 72½ E. "507 vrs. N. 47½ E. 739 vrs. S. 83 E. 660 vrs N. "65 E. 280 vrs. N. 14 E. 88 vrs. N. 24½ E. 310 vrs. "S. 74½ E. 384 vrs. S. 87½ E. 698 vrs. S. 66 E. 140 "vrs. N. 32 E. 169 vrs. N. 15 E. 482 vrs. N. 47½ E. "112 vrs. N. 83 E. 100 vrs. S. 40 E. 183 vrs. S. 12 E. "240 vrs. S. 14 W. 120 vrs. S. 31½ E.297 vrs. S. 89 E. "430 vrs. N. 54½ E. 236 vrs. N. 46 E. 260 vrs. S. "88½ E. 360 vrs. S. 63 E. 242 vrs. S. 20 E. 152 vrs. "S. 83½ E. 280 vrs. N. 44 E. 730 vrs. S. 28 E. 263 "vrs. S. 17 E. 267 vrs. N. 76½ E. 276 vrs. N. 65 E. "460 vrs.S. 25½ E. 182 vrs. S. 10½ E. 192 vrs. S. "48 E. 340 vrs. S. 74 E. 180 vrs. N. 52½ E. 355 vrs. "N. 53½ E. 167 vrs. N. 33½ E. 540 vrs. N. 74 E. "159 vrs. N. 86 E. 400 vrs. N. 83 E. 228 vrs. S. 31 E. "60 vrs. S. 26½ E. 100 vrs. S. 75 E. 218 vrs. to

"Brownsville road and east 100 varas to the place of "beginning."

"Surveyed May 24th, 25th, 26th, 27th, 28th & 29th, "A. D. 1859.

"FELIX A. BLUCHER,
"NASSORIO OLQUIN.
"NARCISO PAZ,
Chain Carriers.

"I, Felix A. Blucher, Deputy Surveyor for Cameron "District, do hereby certify that the foregoing survey "was made according to law and that the boundaries, "limits and corners, with the marks natural and arti- "ficial, are truly described in the foregoing plat and " field notes.

"FELIX A. BLUCHER,
Deputy Surveyor, Cameron Dist.

"I, Felix A. Blucher, District Surveyor for Cameron "District do hereby certify that I have examined the "foregoing plat and field notes and find them correct "and that the same are recorded in my office in Book "E, pages 28 & 29.

"Given under my hand at the City of Brownsville "on this the 29th day of April, A. D. 1861.

"FELIX A. BLUCHER,
"District Surveyor, Cameron District.

"File 545 San Patricio 1st Class.
"Field notes 8 Leagues.
"Filed Aug. 5, 1869.

"PEDRO DE LA GARZA."

(Transcript, pages 33-34).

The map accompanying these field notes will be found between pages 32 and 33 of the transcript.

The grant, according to the re-survey by Blucher, was delineated upon the official map of the General Land Office by the Commissioner thereof (See General Land Office Map "E", dated 1875; original on file; printed reproduction in back of brief).

It will appear, from an inspection of the map, that the grant in controversy is bounded for its entire distance on the north by the Olmos Creek and on all other sides by other grants and surveys, the boundaries of which have, by official surveys and patents been adjusted to the bound-

aries of the grant in controversy, as re-surveyed by Blucher under the Act of Confirmation. This will be shown by the following brief statement of the history of the contiguous surveys:

ON THE EAST:

A Block of Gulf, Colorado & Santa Fe Surveys, the official field notes of which were made for F. J. Parker by J. J. Cocke, County Surveyor of Cameron County, in 1881, the field notes of said surveys calling for their western boundary line to be coincident with the eastern boundary line of the grant in controversy, upon which field notes patents were issued. (Transcript, pages 37-38; map accompanying Cocke's field notes, between pages 38 and 39 of Transcript). *Las Barrosas Grant,* originally made by the State of Tamaulipas (Transcript, pages 46-47); confirmed by the Act of February 10, 1852; re-surveyed under the Confirmation in 1869, by H. M. Field, Deputy Surveyor of Cameron and Hidalgo Districts, Felix A. Von Blucher, Chain Carrier. The field notes of this survey call for the western boundary line of the Las Barrosas and the eastern boundary line of the grant in controversy to be coincident (Transcript, pages 47-48). Patent issued upon these field notes May 26, 1873 (Transcript, page 49).

ON THE SOUTH:

The San Antonio del Encinal Grant, originally made by the State of Tamaulipas (Transcript, page 51); confirmed in 1873 (Transcript, page 16); Patent issued February 18, 1886, on the field notes of the re-survey by Andres Salinas, District Surveyor of Hidalgo County, made in 1882, calling for the southern boundary line of the grant in controversy as the northern boundary line of the most easterly portion of the Encinal Grant (Transcript, pages 18-19).

ON THE WEST:

The Encinal Grant. This grant is irregular in configuration, and extends the whole width, east and west, of the

Santa Rosa de Arriba Grant, and a portion of the distance up its western boundary line. (See Map following page 18 of Transcript). The field notes of the re-survey and patent of this grant call for the western boundary line of the Santa Rosa de Arriba Grant as the eastern boundary line of that portion of the Encinal Grant lying west of the Santa Rosa de Arriba. *Surveys* 156 *and* 155, Texas-Mexican Railway Company, surveyed by Andres Salinas, County Surveyor of Hidalgo County, June 15, 1892, calling for the western boundary line of the grant in controversy to be the eastern boundary line of these surveys (Transcript, page 22). *El Tule*, originally made by the State of Tamaulipas (Transcript, page 19); Confirmed 1872 (Transcript, page 20); Re-surveyed by Felix A. Von Blucher, Special Deputy Surveyor of Nueces County; field notes calling for the western boundary line of the Santa Rosa de Arriba and the eastern boundary line of the El Tule to be coincident; Patent issued by the State of Texas upon these field notes July 18, 1878.

It was conceded by the State that the boundaries of all of these adjoining surveys had been adjusted to those of the grant in controversy, as re-surveyed by Blucher. The Attorney General, on page 35 of his brief in the Court of Civil Appeals, says:

> "The survey of the railroad sections on the east call "for the east line of the Santa Rosa de Arriba, refer- "ring quite evidently to the east line as re-surveyed by "Blucher, and the same may be said with regard to the "call in the patents to the Encinal and the El Tule in "the call for the west line of the Santa Rosa."

It was admited upon the trial that the Plaintiff in Error, through purchase from D. R. Fant, was the owner of all of the above named surveys, except the Las Barrosas, which belongs to an adjoining ranch owner.

All of the witnesses agreed, and it was conceded by both

parties, that the lines of the grant in controversy, as established by the re-survey by Blucher, as well as the lines of all the above named adjoining grants, as established by the official surveys and patents, were well known, plainly marked and easily identified on the ground.

A comparison of the field notes of the 55,500 acre tract, as contained in the State's petition, pages 1 and 2 of the Transcript, with the Blucher field notes, will show that the same beginning point is used and the same courses and distances called for, and that the only variation between the two sets of field notes is that those contained in the State's petition omit the calls contained in the Blucher field notes for the original corners of this and adjoining grants, and also omit the detail calls for the meandering of Olmos Creek on the last course. The State Court finds the fact to be that,

> "The tract of land described in plaintiff's petition, "a part of which it sues for in this action, is substan- "tially the same as that described in the field notes of "Blucher."

Hale and Parker were the owners of and occupying the grant as a ranch at the time the survey was made by Blucher. (See location of ranch house, delineated on Blucher map).

It was admitted upon the trial that D. R. Fant, the original defendant, acquired title to the entire grant by purchase through Hale & Parker, in 1882 and 1883, and that the Plaintiff in Error acquired title from D. R. Fant in April, 1904, and "is the owner of all the land covered by the Santa Rosa de Arriba Grant." (Transcript, pages 95-96).

All of the land in controversy has been under fence by Plaintiff in Error and his predecessors in title since early in the 80's. (See N. L. Word's testimony, Transcript, page 141).

So far as the record discloses, the title to no part of the land in controversy had ever been questioned by the State of Texas until this suit was filed.

In the suit the State recovered three tracts of land, all of which was admittedly included within the boundaries of the grant as re-surveyed by Felix A. Von Blucher, in 1859. One tract was a strip off the western end of the grant and reaching through from its northern to its southern boundary. The other two tracts are taken by the judgment off the eastern end of the grant, and reach through from its northern to its southern boundary line, and are separated by a tongue of land lying between the two tracts, which the trial court held was included within the boundaries of the original grant, as made by the State of Tamaulipas. The judgment of the court below, which was affirmed by the Court of Civil Appeals, is the result of the Court's holding, in support of the State's contention, that the three tracts of land which were recovered were not included within the boundaries of the original grant, as made by the State of Tamaulipas, but were included within the boundaries of the re-survey by the Official Surveyor under the Act of Confirmation.

The trial court and the Court of Civil Appeals held that the Attorney General was specially authorized to institute and prosecute this suit to judgment under the provisions of Section 11 of the Act of the Legislature of the State of Texas, approved September 3, 1901, which reads as follows:

> "Sec. 11. The Attorney General of this State is here-
> "by directed and required to institute and prosecute, in
> "the name of the State of Texas, such suits as may be
> "necessary to recover from the person or persons in
> "possession thereof or claiming title thereto, all lands
> "which are held or claimed under titles emanating from
> "the Spanish or Mexican governments where no valid
> "evidence of such grants are to be found in the records

"or among the files of the General Land Office; and al-
"so such suits as may be necessary to determine the ex-
"act location and boundaries of such lands, where the
"evidence on file in the General Land Office does not
"sufficiently identify the land claimed; and such suits
"shall be brought, prosecuted and tried in the District
"Court of Travis County, Texas."

In both the trial court and the Court of Civil Appeals, the Plaintiff in Error contended that the Act of Confirmation by the Legislature of the State of Texas, and the survey thereunder by the Official Surveyor, and the return of such survey to the General Land Office, constituted a valid agreement between the State of Texas and the owners of the grant, which was binding upon both parties thereto, for the ascertainment and settlement of the boundaries of the grant. Plaintiff in Error further contended that there was nothing in the provisions of Section 11 of the Act of 1901 which could properly be construed as evidencing the purpose and intention of the Legislature to repudiate, or in any way impair, the binding force and effect of the agreement entered into by the State of Texas with the owners of the grant, as evidenced by the Act of Confirmation of 1852 and the re-survey thereunder.

In its opinion, handed down on the original hearing, the Court of Civil Appeals decided these questions adversely to the Plaintiff in Error, and held that Section 11 of the Act of 1901, when properly construed, authorized the institution of this suit and the recovery herein. (Transcript, page 160.)

The Court also held as follows:

" . . . . . Appellants contend, under vari-
"ous assignments of error, that the provisions of the
"Act of 1852 confirming the grant under which they
"claim, and providing for the survey of the land em-
"braced in said grant, constituted a valid and binding
"agreement upon the part of the State with the owners

"of said grant, that they should acquire or be entitled to "the land embraced in the survey made in pursuance to "the provisions of said act. We do not think this con- "tention of appellants is sound. Evidently, the right "to the land was not dependent upon the survey, and "the survey only became important when the land had "not been previously surveyed so as to segregate it from "the adjoining territory, or in the event the description "of the land in the former survey was so vague as to "require a survey to designate and fix its boundaries "with certainty. (Clark vs. Hills, *supra*, 146; Water- "man vs. Smith, 13 Cal., 373; Morrow vs. Whitney, 95 "U. S., 554; West vs. Cochran, 17 How., 403; Langdeau "vs. Haynes, 21 Wall., 529.) The land embraced in "the grant had been properly surveyed and segregated "from other territory prior to the Act of Confirmation, "and the only purpose of the re-survey after the confir- "mation would have been to re-trace, re-mark and thus "make plain the boundaries of the original survey. The "Act of Confirmation does not make the surveyor the "agent of the State so as to bind it by his act in survey- "ing the land. According to the common acceptation "of the language employed in said act, he is made the "agent of the claimant of the land, as the duty to have "the survey made is imposed upon such claimant. In "our opinion, the contract or agreement embraced in the "Act of Confirmation upon the part of the State only "extends to a relinquishment of the land embraced in "the original grant. (Clark vs. Hills, *supra*, 145; "Ryan vs. Carter, 93 U. S., 82; Langdeau vs. Haynes, "*supra*, 529.)" (Transcript, pages 162, 163.)

In the motion for rehearing the constitutional question here presented was raised, and the contract clause of the Constitution of the United States was specially invoked to protect the contract between the State of Texas and the owners of the grant, as evidenced by the Act of Confirmation of 1852 and the re-survey thereunder, from impairment by Section 11 of the Act of 1901, as construed by the State Court.

In its opinion, handed down on the motion for rehearing, the Court considered the constitutional question, and decided it adversely to the Plaintiff in Error, as well as again de-

ciding that Section 11 of the Act of 1901 authorizes this proceeding and recovery. The Court says:

"In the original opinion herein we construed the section of the act of the Legislature referred to by appellant as authorizing the State to bring suits to determine the exact location and boundaries of lands held or claimed under titles emanating from the Spanish or Mexican governments where the evidence on file in the Land Office does not sufficiently identify the land claimed. And also to bring suits to recover from the person or persons in possession thereof, or claiming title thereto, lands which are held or claimed under title emanating from the Spanish or Mexican governments, where no valid evidence of such grants are to be found in the records or among the files of the General Land Office, and we held that there was sufficient evidence adduced upon the trial below to support the finding of the court that the evidence on file in the General Land Office does not sufficiently identify the land claimed by appellant. Hence this suit, when considered in reference to the facts proven, was properly brought for the purpose of identifying the land claimed by appellant.

"We also held in the original opinion that the evidence was sufficient to support the finding of the court that the tract of land claimed by the appellant embraced more land than the grant under which he claimed embraced as originally surveyed, and which was confirmed by the act of 1852, and therefore the suit, in so far as it was intended to recover for the State such excess, could be maintained under said law.

"This court did not construe said section of the act of the Twenty-seventh Legislature as in any manner impairing the obligation or contract of the State, as imposed upon it by the confirmatory act of 1852, but, on the contrary, upheld and sustained such obilgation by holding, in effect, that the State, by virtue of said act, had relinquished to appellant's grantors the full quantity of land granted to them by the Spanish or Mexican governments. The act of 1852 did not impose upon the State the obligation to relinquish the title to land not embraced in the original grant and survey, when the boundaries of such original survey can be traced and identified, although a re-survey made under said act of 1852, not accepted by the State, embraces other land.

"Appellant's motion for rehearing is overruled."

ASSIGNMENTS OF ERROR.

FIRST ASSIGNMENT OF ERROR.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in holding that a certain act of the Legislature of the State of Texas, being Chapter Four of the First Called Session of the Twenty-seventh Legislature, approved September 3rd, 1901, entitled, "An Act to provide for ascertaining and adjudicating certain claims against or in favor of the State for lands, titles to which are claimed to have emanated from the Spanish or Mexican governments, to adjust and settle the rights of the State and the owners or claimants, respectively, of such lands, and if found valid to confirm as against the State the right and title of such claimants or owners, and to provide for the patenting of the same when title thereto has been confirmed by suit, or otherwise, and for the recovery thereof by the State when the claimant has no title thereto," is a valid act, and not in conflict with the Constitution of the United States, because the said Court of Civil Appeals for the Third Supreme Judicial District of Texas should have held that the said act, as the same is herein enforced against the plaintiff in error, is invalid and void, because in violation of Section 10, Article 1, of the Constitution of the United States, because the said act, as enforced against plaintiff in error herein, impairs the obligation of a valid and subsisting contract between plaintiff in error and his privies in title and the State of Texas, entered into prior to the passage of the said invalid Act of the Legislature, as aforesaid, herein enforced against this plaintiff in error, the said valid and subsisting contract which is so impaired by the enforcement of the said invalid Act consisting of the provisions of an Act of the Legislature of the State of Texas, approved February 10th, 1852, providing for a re-survey of the Santa Rose de Arriba grant, among others, and the acceptance of the provisions

of the said Act by this plaintiff in error and his predecessors in title.

SECOND ASSIGNMENT OF ERROR.

The Court of Civil Appeals for the Third Supreme Judicial District of Texas erred in affirming the judgment of the District Court of the Twenty-sixth Judicial District of Texas, because the Act of the Twenty-seventh Legislature, Section 11, Chapter 4, of the First Called Session, as construed and enforced against this Plaintiff in Error, is void, because in conflict with the Constitution of the United States, in that the said Act, as so construed and enforced, impairs the obligation of a valid, subsisting and binding contract between the owners of the Santa Rosa de Arriba grant and the State of Texas, as evidenced by the provisions of an Act of the Legislature of the State of Texas, of date February 10th, 1852, and the survey of the Santa Rosa de Arriba grant by the official surveyor under and in accordance with the provisions of the said Act of February 10th, 1852, which said contract was entered into prior to the passage of the said Act of the Twenty-seventh Legislature, which, as so construed and enforced by said Court, is an attempt upon the part of the State of Texas to repudiate the said binding and subsisting contract, and to impair the obligation thereof, and is therefore in violation of the Constitution of the United States and contrary to the provisions of Paragraph 1, Section 10, of Article 1, of the Constitution of the United States.

BRIEF OF THE ARGUMENT.

FIRST POINT.

This Court will ascertain and determine for itself, in a case of this character, whether or not a contract existed, and, if so, its import, and whether it has been impaired by State legislation.

AUTHORITIES.

Muhlker vs. Harlem Railroad Co., 197 U. S., 571.
Kies vs. Lowrey, 199 U. S., 239.
H. & T. C. Ry. vs. Texas, 177 U. S., 76.
St. Paul Gas Light Co. vs. St. Paul, 181 U. S., 147.

SECOND POINT.

While it is a general rule that the construction given by State Courts to State laws is binding and conclusive upon the Federal Courts, this rule does not extend to cases in which this Court is called upon to interpret a contract of the State, though it has been made in the form of a law or by functionaries of the State in pursuance of State laws. This Court will, therefore, construe for itself the contract evidenced by the Act of Confirmation of 1852 and the acceptance thereof by the land owner, and will not be bound by the construction placed upon said contract by the State Court.

AUTHORITIES.

Jefferson Branch Bank vs. Skelly, 1 Black, 436.
N. O. Waterworks Co. vs. La. Sugar Co., 125 U. S., 18.
Wilmington & Weldon R. R. vs. Alsbrook, 146 U. S., 279-293.
Mobile & Ohio R. R. vs. Tennessee, 153 U. S., 486-492.
Douglas vs. Kentucky, 168 U. S., 488, and cases there cited.
McCullough vs. Virginia, 172 U. S., 102-109.

THIRD POINT.

An agreement for the settlement of boundaries to which the State is a party should be construed and enforced according to the well established principles which regulate similar contracts between individuals.

AUTHORITIES.

State vs. Cloudt, 84 Southwestern Reporter, 415, 416.
Wilson vs. Dillingham, 14 Texas Civil Appeals, 628; 38 Southwestern Reporter, 651.
United States vs. Land Co., 148 U. S., 43.
Higueras vs. United States, 5 Wall., 836.
Fristoe vs. Blum, 92 Texas, 80.
State vs. Galveston, 38 Texas, 28.
Coleman County vs. Smith, 55 Texas, 259; approved in Cooper vs. Austin, 58 Texas, 501.

FOURTH POINT.

(a) The Act of February 10, 1852, confirming the grant in controversy and providing for a settlement of its boundaries by an official survey, was a proposition made by the State to the land owner, which, upon acceptance, as evidenced by the survey at the request of the owner and the return of the field notes to the General Land Office, ripened into a valid contract, which was binding upon both parties thereto.

(b) When the survey is made and the field notes thereof are returned as required by law, it is conclusive evidence against both the government and the claimant "that the land granted by the confirmation of Congress was the same described and bounded by the survey." "This consideration depends on the fact that the claimant and the United States were parties to the selection, and mutually bound and respectively estopped by it."

(c) In such a case the patent is not necessary to perfect, nor does it add anything to, the title, but only serves as an evidence thereof.

(d) In such a case the binding force and effect of the re-survey and the Act of Confirmation is not dependent upon, nor can it in any manner be affected by, an inquiry into the question as to whether or not the boundaries of the grant,

as fixed by the re-survey, are an accurate reproduction of such boundaries, as established by the original grant from the former government.

AUTHORITIES.

Landeau vs. Haines, 21 Wallace, 521.
Clark vs. Hills, 67 Texas, 141.
Menard Heirs vs. Massey, 8 Howard, 293.
Guitard vs. Stoddard, 16 Howard, 494.
West vs. Cochran, 17 Howard, 403.
Ryan vs. Carter, 93 U. S., 78.
Morrow vs. Whitney, 95 U. S., 551.
U. S. vs. Roselius, 15 Howard, 34.
Arguello vs. U. S., 18 Howard, 539.
Forbes vs. Withers, 71 Texas, 472.
Commonwealth vs. Pejepscut, Prop., 10 Mass., 156.
Rutherford vs. Grienes Heirs, 2 Wheat., 196.
Howard vs. Perry, 71 Texas, 266.
Hamilton vs. Avery, 20 Texas, 635.
Wright vs. Hawkins, 28 Texas, Supp., 408.

CONTRA.

On the question as to the binding force and effect of the re-survey, the decision of the Court of Civil Appeals in this case, in which it is held that the same is not binding upon the government, and the case of Corrigan vs. State, 94 Southwestern Reporter, 95, in which the same Court holds that the re-survey is not binding upon the claimant.

FIFTH POINT.

In such a case the official survey can only be avoided by the sovereign by timely allegations and proof of fraud, to which the claimant is a party.

AUTHORITIES.

White et al. vs. Burnley, 20 Howard, 247.
Maxey vs. O'Connor, 23 Texas, 234.
Smith vs. Hughes, 23 Texas, 249.
Elliott vs. Mitchell, 28 Texas, 111.
Railway vs. State, 81 Texas, 602.
Howard vs. Colquhoun, 28 Texas, 134.
Land Company vs. State, 1 Texas Civil Appeals, 621.

SIXTH POINT.

Section 11, of the Act of September 23, 1901, when construed and enforced as it was in this case by the Court of Civil Appeals, as authorizing the institution by the Attorney General of this suit and the recovery herein of land to which the title of plaintiff in error and his predecessors had been perfected under the contract, as evidenced by the Act of Confirmation of 1852 and the re-survey thereunder and the return of the field notes to the General Land Office, impairs the obligation of said contract and is, therefore, in violation of and contrary to the provision of Paragraph 1, of Section 10, Article 1, of the Constitution of the United States.

AUTHORITIES.

Houston & Texas Central R. R. vs. Texas, 177 U. S., 76.
St. Paul Gas Light Co. vs. St. Paul, 181 U. S., 147.

SEVENTH POINT.

Not too late to raise Federal question on motion for rehearing, if the question is considered and passed upon by the State court.

AUTHORITIES.

Leigh vs. Green, 193 U. S., 85.
Mallett vs. North Carolina, 181 U. S., 589.

ARGUMENT.

May It Please the Court:

It is deemed proper to here explain that the unnecessarily large size of the transcript in this case is accounted for by the fact that the case was tried in the court below on the theory that the issue of fact as to where the boundaries of the Santa Rosa de Arriba Grant were established by the Surveyor General of the State of Tamaulipas, under the original grant, was still an open one, into which the Court could, at the suit of the State, inquire.

It was, on behalf of the Plaintiff in Error, earnestly contended, both in the trial court and in the Court of Civil Appeals, that the Act of Confirmation and the survey thereunder by the Official Surveyor, and the return of the field notes of such survey to the General Land Office, completely merged the original grant by the State of Tamaulipas into the legislative grant by the State of Texas and the re-survey thereunder.

The Court below ruled against the Plaintiff in Error upon this question, and its ruling made it necessary for both parties to introduce evidence upon the issue as to the proper location of the boundaries of the original Mexican grant.

The voluminous record in this case is principally made up of the evidence introduced upon this issue, which the Court of Civil Appeals held was conflicting, and held that the finding of the trial court on the issue would not be reviewed.

The Plaintiff in Error fully realized that the determination of this issue by the State Court was final and would not be reviewed by this Court, and so realizing, endeavored to have the transcript of the record for this Court confined to such matters as were pertinent to the Federal question involved. To this end the Plaintiff in Error, by formal praecipe, addressed to the Clerk of the Court of Civil Ap-

peals, designated the portions of the record which should be incorporated into the transcript for this Court, and also designated the portions which should be omitted. (Transcript, page 218.) The State, through its Attorney General, opposed the curtailment of the record, and demanded that all of the proceedings in the trial court and Court of Civil Appeals should be carried into the transcript for this Court. (Transcript, page 222.) The matter having been referred, as required by the rules of practice in such matters, to the Chief Justice of the Court of Civil Appeals, it was ordered that the entire record be copied in the transcript for this Court, the Chief Justice stating that the order was made without determining whether there was or not merit in the request of the Plaintiff in Error, but that the request was refused for the reason that he declined to undertake the task of going through the record. (Transcript, page 227.) The result is that the transcript of the record in this Court is encumbered with a vast amount of matter which relates alone to the contested issue of fact, as to where the boundaries of the grant in controversy, and those adjoining it, as estabilshed under the original grants from the State of Tamaulipas, should now be located, and none of this matter will in any degree aid this Court in determining the questions which will be submitted for its decision. The facts which are at all pertinent to the Constitutional question here involved are not only comparatively few, but are undisputed.

The facts are set forth in the foregoing statement, and are simply and briefly these: In 1832 the State of Tamaulipas made a grant of land to Pedro de la Garza, which the State of Texas, as a succeeding sovereign, saw fit, by the Act of February 10, 1852, to recognize and confirm, and to accompany the confirmation with a proposition to the owner of the grant to agree with him upon a method of procedure by which the exact extent, location, area and

boundaries of the grant should be forever settled, by a re-survey of the grant, at the expense of the owner, by an official surveyor, and the return of the field notes of such survey to the General Land Office. The owner accepted the proposition, and acted on it by having the survey made and the map and field notes returned. The Commissioner of the General Land Office delineated the grant, as re-surveyed, upon the maps of this office, but did not issue a patent thereto, but did issue patents to the grants adjoining on the east, south and west, whereby the boundaries of the adjoining grants were fixed and adjusted, so as to conform to the boundaries of the grant in question, as established by the re-survey, which boundaries are well known, plainly marked and easily identified on the ground. After the lapse of nearly half a century, the boundaries of the grant, as fixed and settled under the agreement, are repudiated and disregarded, by the institution of this suit and the recovery herein of land which the Plaintiff in Error and his predecessors in title, relying upon the agreement between them and the sovereign, have had in actual possession, use and under fence for nearly a quarter of a century.

The Court of Civil Appeals, as shown by the quotations from its opinion on the motion for rehearing, set out in the foregoing statement, construes the obligation or contract entered into between the State and the owner of the grant, under the Act of 1852, as binding upon the State only to the extent of the relinquishment of the precise land embraced within the original grant and survey, and as imposing no obligation upon the State with relation to any land included within the re-survey, under the Act of Confirmation, unless such re-survey results in an exact reproduction of the original boundaries. It holds, therefore, that Section 11 of the Act of September 23, 1901, which, under its construction, authorizes this suit and the recovery herein,

does not impair the obligation of the contract entered into between the State and the claimant, under the Act of 1852.

While this Court will accept as conclusive the construction placed by the State Court upon Section 11, of the Act of September 23, 1901, it will not be bound by the construction placed by the State Court upon the Act of 1852, but will determine for itself whether there was a contract; what is its scope and meaning and whether it has been impaired by recent legislation, as the latter is construed by the State Court.

In the case of Jefferson Branch Bank vs. Skelly, above cited, this Court says:

> " . . . this court has repeatedly said, whenever "an occasion has been presented for its expression, "that its rule of interpretation has invariably been, "that the construction given by the courts of the States "to State legislation and to State constitutions have been "conclusive upon this court *with a single exception*, "and that is when it has been called upon to interpret "the contracts of States, 'though they have been made "in the form of law,' or by the instrumentality of a "State's authorized functionaries, in conformity with "State legislation. It has never been denied, nor is "it now, that the Supreme Court of the United States "has an appellate power to revise the judgment of the "Supreme Court of a State, whenever such a court shall "adjudges that not to be a contract which has been al- "leged, in the forms of legal proceedings, by a litigant, "to be one within the meaning of that clause of the Con- "stitution of the United States which inhibits the States "from passing any law impairing the obligation of con- "tracts. Of what use would the appellate power be to "the litigant who feels himself aggrieved by some par- "ticular State legislation, if this court could not decide, "independently of all adjudication by the Supreme "Court of a State, whether or not the phraseology of the "instrument in controversy was expressively of a con- "tract and within the protection of the Constitution of "the United States, and that its obligation should be "enforced, notwithstanding a contrary conclusion by "the Supreme Court of a State? It never was intended "and cannot be sustained by any course of reasoning, "that this court should, or could with fidelity to the

"Constitution of the United States, follow the construc-
"tion of the Supreme Court of a State in such a matter,
"when it entertained a different opinion; and in form-
"ing its judgment in such a case, it makes no difference
"in the obligation of this court in reversing the judg-
"ment of the Supreme Court of a State upon such a
"contract, whether it be one claimed to be such under
"the form of State legislation, or has been made by a
"covenant or agreement by the agents of a State, by
"its authority."

This case has been cited and approved in many recent decisions, some of which are referred to under the Second Point in the brief.

In the case of Gas Light Company vs. St. Paul, above cited, which has also been so often approved in later cases that it is the settled and well established rule of this Court, it is said:

"Where subsequent State legislation is asserted to be
"repugnant to the Constitution of the United States
"because such legislation impairs the obligations of a
"contract, the power to determine whether there be
"such impairment imposes also on this court the duty,
"when necessary, to ascertain whether there was a
"contract, and its import. And this, though it be in
"a given case, the State Court has decided that there
"was no impairment either because the contract had
"never existed or because from an interpretation of its
"provisions it was found that the obligations which it
"is asserted were impaired, never arose. Houston &
"Texas Central Rd. vs. Texas, 177 U. S., 66, 77 and
"cases cited. In cases of this nature, therefore, the
"questions to be considered are these: Was there
"a contract, and if yes, what obligations arose from it?
"and, has there been State legislation impairing the
"contract obligations? Abstractly speaking, the duty
"would be first in order to determine whether the con-
"tract existed and its true meaning, before ascertain-
"ing whether any obligations of the contract had been
"impaired by subsequent legislation."

The questions involved in this case will be presented in the order as above outlined by this Court.

The well established rule of general application touching

the binding force and effect of agreements for the settlement of boundaries is well stated in the case of Coleman County vs. Smith, 55 Texas, p. 259, referred to and approved in the case of Cooper vs. Austin, 58 Texas, 501, in which the Court says:

> "The validity of an agreement for the settlement of " a boundary does not depend at all upon the accuracy "with which the line is run. Whether the parties were "right or wrong in their belief that the line they estab- "lished and agreed upon as the boundary of their lands "was precisely where it ought to be, or where the orig- "inal surveyor made it, was wholly immaterial. It "was enough, if there was any doubt or dispute be- "tween them about it, and they determined to settle it "upon that basis. If absolute exactness in defining "the lines were necessary to render such an agreement "binding, it is not easy to perceive how it could be at- "tained. Different surveyors with different instru- "ments might locate the true line at different places. "An agreement made today upon the survey of one "might be set aside tomorrow upon that of another, "perhaps no less skillful or accurate. This would be to "make agreements nugatory; whereas, they are to be "encouraged, favored and upheld, especially in these "cases of doubtful boundaries. Such cases are pro- "verbially vexatious, and breed ill-blood, and they are "very apt to arise in this country. It is notorious that "surveys have been hitherto very loosely made and of- "ten by incompetent surveyors. Lines have been in- "sufficiently marked and corners designated by perish- "able objects. And the settlement of the country and "the destroying ax of the settler and time have oblit- "erated the path of the surveyor and destroyed the "monuments he made. And so, when the lines he ran "cannot now be run, and the boundaries he fixed have "become of doubtful identity, and the parties to be af- "fected by them have mutually agreed that here he "fixed his lines and set their bounds, such agreement "should be held conclusive; not subject to be set aside "or reopened upon any subsequent discovery that pos- "sibly a mistake was made in that agreement as to the "true locality."

It is also well settled, as it should be on every principle of reason and justice, that an agreement for the settlement

of boundaries to which the State is a party should be construed and enforced according to the well established principles which regulate similar contracts between individuals. In the case of State vs. Cloudt, 84 Southwestern Reporter, 415, 416, the Court says:

> "Where a State appears as a party to a suit, she vol-
> "untarily casts off the robes of her sovereignty, and
> "stands before the bar of a court of her own creation,
> "in the same attitude as an individual litigant, and her
> "rights are determined and fixed by the same principle
> "of law and equity."

In the case of Wilson vs. Dillingham, 14 Texas Civil Appeals; 38 S. W. Reporter, p. 651, an Act of the Legislature conferred upon the Commissioner of the General Land Office the power and made it his duty to fix and designate on the map the outer boundaries of the Texas & Pacific reservation and the Court says that the Legislature:

> " . . . having conferred upon the Commissioner
> "of the General Land Office the power to so designate
> "and fix the boundaries of the reservation, his act in
> "the matter is conclusive."

In the case of United States vs. Land Co., 148 U. S., p. 43, the Act of Congress provided that when the railroad was shown by the certificate of the Governor of the State of Oregon, as in said Act provided, to have been constructed and completed, patents for said land should issue, in due form, to the State or to its grantees. The Supreme Court of the United States said:

> "Now, it is familiar law that when jurisdiction is
> "delegated to any officer or tribunal, his or its deter-
> "mination is conclusive. Thus, in the case of U. S. vs.
> "Arredondo, 6 Pet., 691-729, this Court said: 'It is a
> " 'universal principle that, where power or jurisdiction
> " 'is delegated to any public officer or tribunal, over a
> " 'subject matter, and its exercise is confined to his or
> " 'their discretion, the acts so done are valid and bind-
> " 'ing as to the subject matter; and individual rights

" 'will not be disturbed collaterally for anything done
" 'in the exercise of that discretion within the author-
" 'ity and power conferred. The only questions which
" 'can arise between an individual claiming a right un-
" 'der the acts done, and the public, or any person de-
" 'nying its validity, are, power in the officer and fraud
" 'in the party. All other questions are settled by the
" 'decision made or the act done by the tribunal or of-
" 'ficer, whether Executive (1 Cranch, 170, 171), Leg-
" 'islative (4 Wheat., 423; 2 Pet. 412; 4 Pet. 563), Ju-
" 'dicial (11 Mass., 227; 11 S. & R., 429; adopted in 2
" 'Pet., 167, 168) or Special (20 Johns, 739, 740; 2
" 'Dow, P. C., etc.) unless an appeal is provided for, or
" 'other revision, by some appellate or supervisory tri-
" 'bunal, is prescribed by law.' See also the following
"cases: Foley vs. Harrison, 15 How., 433-448; John-
"son vs. Towsley, 13 Wall., 72-83; Smelting Co. vs.
"Kemp, 104 U. S., 630-640; Shepley vs. Cowan, 91 U. S.,
"330-340; Moore vs. Robbins, 96 U. S., 530-535; Quin-
"by vs. Conlan, 104 U. S., 420-426; Steel vs. Smelting
"Co., 106 U. S., 447-450; Lee vs. Johnson, 116 U. S.,
"48-51; Wright vs. Roseberry, 121 U. S., 488-509."

In the case of Higueras vs. United States, 5 Wall., 836, in discussing the force and effect of a decree of confirmation of a Mexican grant, the Court says:

"The present inquiry, however, is how it was viewed
"by the Commissioners when they framed the decree,
"and not what they might or ought to have decided, if
"the evidence since taken had been before them at that
"time."

In the case of Fristoe vs. Blum, 92 Texas, p. 80, the Supreme Court says:

"A clear understanding of the relation in which the
"State stands to the purchasers in these contracts will
"greatly facilitate a proper solution of the questions
"upon wihch this case depends. It is well settled that
"so long as the State is engaged in making or enforc-
"ing laws or in the discharge of any other governmental
"function, it is to be regarded as a sovereign and has
"prerogatives which do not appertain to the individual
"citizen, but when it becomes a suitor in its own courts
"or a party to a contract with a citizen the same law
"applies to it as under like conditions governs the con-

"tract of an individual. State vs. Kroner, 2 Texas, "492; State vs. Purcell, 16 Texas, 305; Green vs. State, "73 Cal., 32; Carr vs. State, 127 Ind., 204; 22 Am. "St. Rep., 624; State vs. Snyder, 66 Texas, 700; State "vs. Cordoza, 8 S. C., 79; Patton vs. Gilmer, 42 Ala., "548; 94 Am. Dec., 665; Donald vs. State, 89 N. Y., "36; 42 Am. Rep., 277; People vs. Stephens, 71 N. Y., "549; People vs. Canal Commissioners, 5 Denio, 401; "Coleman vs. State, 134 N. Y., 564; State vs. Dennis, "39 Kan., 509; Morton, Bliss & Co., vs. Comptroller, 4 "S. C., 448; Davis vs. Gray, 16 Wall., 203; Co-operative "Ed. Book, 21, p. 448; Railway vs. United States, 14 "Otto, 680; Co-operative Ed. Book 26, p. 891.

"In Carr vs. State, 127 Ind., 204, the Supreme Court "of that State said: 'As there is a perfect contract, " 'the State is bound to perform it according to its tenor " 'and effect, and to redeem the pledge it has declared " 'to be irrevocable. In entering into the contract it " 'laid aside its attributes as a sovereign and bound it- " 'self substantially as one of its citizens does when he " 'enters into a contract. Its contracts are interpreted " 'as the contracts of individuals are, and the law " 'which measures individuals' rights and responsibili- " 'ties measures, with few exceptions, those of a State, " 'whenever it enters into an ordinary business con- " 'tract.'

"The Court of Appeals of the State of New York, in "the case of People vs. Stephens, 71 New York, 549, "used the following language: 'The State in all its con- " 'tracts and dealings with individuals must be ad- " 'judged and abide by the rules which govern in deter- " 'mining the rights of private citizens contracting and " 'dealing with each other. There is not one law for " 'the sovereign and another for the subject; but when " 'the sovereign engages in business and the conduct " 'of business enterprises, and contracts with individ- " 'uals, although an action may not lie against the sov- " 'ereign for a breach of the contract, whenever the con- " 'tract in any form, comes before the courts, the rights " 'and obligations of the contracting parties must be " 'adjusted upon the same principles as if both con- " 'tracting parties were private persons. Both stand " 'upon equality before the law, and the sovereign is " 'merged in the dealer, contractor and suitor.'

"The Supreme Court of South Carolina clearly an- "nounced the same doctrine in the case of Morton, Bliss "& Co. vs. Comptroller, in the following language: " 'When a sovereign State enters into a contract or bar- " 'gain with an individual it assumes to be bound, in all

"'particulars, as an individual under like circum-
"'stances would be bound, by what is expressed or
"'properly implied by the terms of such contract. The
"'measure of its obligation is that applied to individ-
"'uals.'"

The rule applicable to this question is stated in a manner which will doubtless meet the approval of this Court, by Judge Ballinger, in his brief in the case of State vs. Galveston City Co., 38 Texas, p. 28, as follows:

> "The rules applicable to the Government, when it "acts merely through ministerial officers in the execu-"tion of general laws, and when it assumes the special "character of a contractor and acts by the particular "expression of the legislative will, and through special "agents, as a holder of property or rights of any kind, "are essentially different. In the latter it is subject "and peculiarly subject to the rules which apply to in-"dividuals in the construction of their contracts and "conduct."

The courts of the country, and particularly this Court, have so frequently been called upon to apply the well established principle announced in the cases above cited, to agreements entered into between the sovereign and the claimant for the settlement of the boundaries of grants made by former sovereigns, that it is only necessary to review the history of such confirmatory legislation and the decisions of the courts thereunder, to demonstrate that the rule laid down by the Court of Civil Appeals of Texas in this case, and in the case of Corrigan vs. the State, above cited, is entirely out of harmony, and indeed, in direct conflict with a long and unbroken line of decisions.

The opinion of the Court of Civil Appeals in this case, and in that of Corrigan vs. the State, when read together, will be found to state, in a most forcible and emphatic manner, the views of that learned Court, as to the effect of the re-survey and patent under the Act of Confirmation of the old Mexican grants. In this case it is distinctly and ex-

pressly held that the owners of the confirmed grants could not, by complying with the Act of Confirmation, acquire title to a single acre of land which was not included within the boundaries of the original grant. In the case of Corrigan vs. State, it is held, in effect, by the same court, that the owner of the confirmed grant can at will disregard the survey under the Act of Confirmation and the patent issued thereon, and claim title to any land included within the boundaries of the original grant, even though it was excluded from the re-survey, under the Act of Confirmation. That the Court of Civil Appeals has in some unaccountable was fallen into a grave error as to the effect of the decisions of this Court bearing upon this question is made manifest by the fact that in both this and the Corrigan case, and in support of the decisions therein, cases decided by this Court are cited.

It is natural, and indeed indispensible, that, as a guide in determining what construction should be placed upon the Confirmatory Acts of the Legislature of the State of Texas, and the purpose, meaning and intent of such acts, to turn to the construction which has been placed by the highest Court of the land upon the Acts of Congress, from which those of the Legislature are substantially copied. It is, of course, well known that the substance, and, to a considerable extent, the verbiage of the Acts of Confirmation of the Spanish and Mexican grants passed by the Legislature of the State of Texas was taken from similar acts passed by the Congress of the United States, while the Nation was in its infancy. It is well known that the two legislative bodies had precisely the same purpose in view in enacting this character of legislation. They were (1), To recognize, protect and confirm property rights created by and acquired under the former sovereign, and (2), To ascertain and definitely and finally determine what land had been granted by such former sovereign. Some of the earlier Acts of Congress

dealing with this subject were confined to a confirmation of the grants, and contained no provision for a re-survey and patent under the Act of Confirmation. These were conclusive as to the title, but left the question as to the boundaries of the grants undetermined and indeterminable, except through the ordinary course of delay and prolonged litigation. Congress, however, at an early date, realized that it would be of vast benefit to the claimants to provide some method by which the boundaries of the respective grants could be speedily and conclusively determined. It also realized that the government was equally interested with the claimant in having this done, both because it would tend to prevent litigation over the boundaries and encourage the settlement of the land, but also because it would thus be definitely ascertained what land was still unappropriated. It was for this reason that all of the Acts of Confirmation passed by Congress, except the very earliest, contained some provision authorizing or requiring a survey and patent of the confirmed grant. In the various acts the provisions bearing upon this particular subject are couched in somewhat different language, some of them making it the duty of the Surveyor General to cause the land to be surveyed, platted and recorded in the various registrars' offices, and reported to the General Land Office, while others made it the duty of the claimant to have the land surveyed. Some of the acts, as construed by the courts, required a compliance by the complainant with the statutory provisions touching the re-survey as a condition precedent to being entitled to the benefits of the confirmation. Some of them simply imposed the duty upon the claimant, but did not make it a condition precedent to the Act of Confirmation, nor prescribe any penalty or forfeiture for a failure to comply therewith. These variances in the provisions of the Acts lead to a marked difference in the decisions as to the effect of a failure to have the survey made. It can, however, be

stated that, without a single exception, it has been held in every case wherein the question was either directly or incidentally involved, that where the survey *was* made by the official surveyor, under any of these acts, it was binding and conclusive against the government and the claimant. This statement will be abundantly verified by an examination of the authorities, and it is inconceivable how the Court of Civil Appeals ever arrived at any other conclusion.

It is proper to say that it has uniformly been held that it was a legislative function to prescribe the manner in which, and the instrumentalities by which, boundaries in which the public have any interest shall be determined. In the case of West vs. Cockran, 17 Howard, 403-416, the Supreme Court of the United States, in construing the seventh section of the Act of Congress of 1807, which declared that the confirmed grant should be surveyed under the direction of the Surveyor General and that he should transmit general and particular plats of the tracts thus surveyed to the proper register or recorder and also transmit copies to the Secretary of the Treasury, and that certificate and plat being filed with the registrar or recorder, he was thereupon required to issue a patent certificate in favor of the claimant, which being transmitted to the Secretary of the Treasury, entitled the party to a patent in like manner as patents were issued on lands sold by the United States, says:

> "It was competent for Congress to take up these ti-
> "tles or rights and act on them either by legislating di-
> "rectly that each claimant should be confirmed, and
> "have a perfect title to his actual possession lawfully
> "acquired under France or Spain, without ascertaining,
> "in the Act of Confirmation, or by any special means
> "provided therein the bounds of claims confirmed. But
> "it was also competent for Congress to provide, that
> "before a title should be given to any possessor, the
> "exact limits of his possession, and the title which the
> "United States was to give, should be defined, and that
> "this should be done by such agencies and in such man-
> "ner as might be fixed by Congress. This is in entire

"accordance with the provisions of the treaty, which "guarantees to the inhabitants the rights of property "secured to them, but it was not intended to provide "for the particular modes and instrumentalities by "which such rights should be ascertained and enforced "—these being left to the Nation to whose powers they "were confided, so that the question is what has Con- "gress deemed expedient? Now, the policy which is "so obvious, and which has been acted on—the United "States ever since they began to exercise power over "the public lands, namely, to give defined limits to "grants, may well be supposed to have actuated Con- "gress in 1807. The provisions of that act clearly "show that although Congress intended that the Com- "missioners should adjudge the existence of good titles "to lands held under France and Spanish possessors, "yet they did not intend that a final legal title, as "against the United States, should be made to vague "grants, until their bounds had been ascertained by the "means there designated, and the particular tract de- "fined by survey."

Upon the same well established principle rests the decision of the Supreme Court of Texas in the case of Jones vs. Powers, 65 Texas, p. 213, in which the Court construed the Act of the Legislature of the State of Texas prescribing the manner in which County boundaries shall be established, and in which the Court says:

"When a county line has been once run, marked "upon the ground and established in accordance with "law, it cannot be said to be indefinite. It may be in- "correct, but nevertheless, well defined. None of the "statutes seem intended to give power from time to "time to the County Commissioners' Courts to correct "what may have been incorrect in the establishment of "the county line on the ground, but seem intended to "give a means by which the line or lines may be made "definite and certain, and when so rendered in accord- "ance with the statute, whether correctly run and "marked or not, the statutory declaration that the line "so run and marked shall thereafter be regarded as the "true boundary line between the counties, ought to be "given full effect and held as a prohibition to any fur- "ther acts looking to the establishment of some other "lines. It rests with the Legislature to define the

"boundaries of counties, and to provide the means "whereby their true localities on the ground may be de- "termined, and when these methods have been pursued, "and the line or lines ascertained, as required by law to "be, the line or lines so established, should be consid- "ered the true one, whether mathematically so or not. "It is of more importance that the lines be certain and "well defined than that they be absolutely correct. If "a different rule were adopted, untold injury and con- "fusion might result."

Many more cases to the same effect might be cited.

The next and only remaining question to be examined is what effect is to be given to establishment of a boundary in which the public has an interest, in the manner and through the instrumentalities prescribed by the legislative authority. The question is equally well settled, and upon it there is no conflict of decision.

In Menard's Heirs vs. Massey, 8 Howard, 293, by the Act of Congress of April 29, 1816, it was provided that a surveyor should be appointed of the public lands for the Territories of Illinois and Missouri, whose duty it should be to cause so much lands in the said Territories as the President should direct, to be surveyed and divided as were the public lands of Southwest Iowa, and the Act further declared:

"It shall also be the duty of the surveyors to cause to "be surveyed the lands in said Territories, the claims to "which have been or which hereafter may be confirmed "by any Act of Congress, which have not already been "surveyed according to law, and he shall transmit to "the registrars of the Land Offices in the said Terri- "tories general and particular plots of the lands sur- "veyed or to be surveyed, and shall also forward copies "of said plots to the Commissioner of the General Land "Office, and all of the plots and surveys and all other "papers and documents pertaining, or which did per- "tain to the office of the Surveyor General under the "Spanish government, within the limits of the Territory "of Missouri, etc., and shall be delivered to the sur- "veyor, under this Act, and any plot or survey, duly "certified by such surveyor, shall be admitted in evi- "dence in any of the courts of the United States, or the "Territories thereof."

Under this Act a survey was made by J. C. Brown, surveyor, of the grant confirmed to Pascal L. Cerre, by the Act of Congress approved July 4, 1836. The Surveyor General approved the survey June 26, 1840. The Court says:

> "In having the land laid off and in approving the sur-
> "vey, the Attorney General acted under the authority
> "of Congress, expressly conferred by the Act of 1816."

And again:

> "The land was directed to be surveyed according to
> "his direction, the surveyor having regard to the last
> "and fifth instruction, with the exception that the spe-
> "cial plot called for in the concession, which was re-
> "quired to be laid down and noted in some part of the
> "survey. When it was made and the field notes re-
> "turned to the Surveyor General's Office, and the de-
> "scription and plat made out in form and approved by
> "the Surveyor General, it was conclusive evidence as
> "against the United States that the lands granted by
> "the Confirmation of Congress was the same described
> "and bounded by the survey, unless an appeal was taken
> "by either party, or an opposing claimant to the Com-
> "missioner of the General Land Office. This consid-
> "eration depends on the fact that the claimant and the
> "United States were parties to the selection of the land,
> "and were mutually bound and respectively estopped
> "by it."

In the case of Guitard vs. Stoddard, 16 Howard, 494—on page 592—the case of Menard's Heirs vs. Massey is cited and quoted from with approval, as it was also in the case of Bryan vs. Forsyth, 19 Howard, 733.

It will be apparent from an examination thereof that the cases cited by the Court of Civil Appeals in support of its decision in this case are, insofar as they are all applicable to the questions here involved, in full harmony with the decisions in Menard's Heirs vs. Massey and the other cases above cited, and that none of them can, by any possible construction, be held to support the views of the Court of Civil Appeals, as expressed in its opinion in this acse.

The case of Ryan vs. Carter, 93 U. S., 78, is cited by the Court of Civil Appeals in support of the proposition that "a contract or agreement embraced in the Act of Confirmation on the part of the State only extends to a relinquishment of the land embraced in the original grant." We confidently and most respectfully submit that a careful reading of that case by the Court will disclose that there is absolutely nothing in it which even tends to affirm the proposition in support of which it is cited by the Court, nor is there in the case anything tending to deny the proposition contended for by the Plaintiff in Error, that the State intended to be and was bound by the re-survey under the Act of Confirmation.

In the case of Ryan vs. Carter both parties to the litigation claimed under the same Spanish grant to Auguste Dodier, which was confirmed by the Act of Congress. The land so confirmed was surveyed in 1817 by the proper surveyor of the United States and is known as the U. S. Survey No. 422, but the patent citing the confirmation and the survey did not issue until August 9th, 1872. There is in the case absolutely no question raised or decided as to the conclusiveness upon either the Government or the grantee of the survey by the Government Surveyor. The entire litigation was to determine the title between the respective litigants to a particular portion of the grant as the same was established by the Government Surveyor. In its statement of the case the Court said:

> "The properyt in suit is a part of a tract of land "known as Survey No. 422, in the County of St. Louis. "Both parties claim under Auguste Dodier to whom the "land was confirmed in 1810 by Board of Commission- "ers created to settle the title of claims to lands in the "Territory of Orleans and Louisiana."

The sole question considered and decided by the Court was as to whether the Act of Confirmation passed the fee

to the land included in the grant so as to support the plea of the Statute of Limitations or whether limitation could only begin to run from the date of the patent. The Court stated the question thus:

> "The plaintiff insists that this confirmation vested "only an equitable title, and the Statute of Limitations "did not begin to run until the fee passed out of the "United States by patent in 1873. On the other hand, "the defendant contends that the fee passed directly to "him in 1812 by the operation of the Act of June 13th, "of that year, and if so, it is conceded that the Statute "of Limitations give them title."

The Act of Confirmation was construed by the Court solely for the purpose of deciding this question, and it is held that "it (the Act of Congress) does not require the production of 'books before any commission or other tribunal established for that special purpose, but confirms, *proprio vigore*, the rights, titles and claims to the lands embraced by it, and operates as a grant to all intents and purposes. Repeated decisions of this Court have declared that such a statute passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and a grant may be made by law, as well as by a patent pursuant to law." The question as to whether the survey by the Government Surveyor under the Act of Confirmation and the patent issued upon such survey was conclusive upon the issue as to what particular land was included within the grant to which the fee passed under the Act of Confirmation itself, was not before the Court and was therefore not decided, and the case has therefore not the remotest bearing upon any question involved in this case.

In the case of Landau vs. Haines, 21 Wallace, 521, also cited by the Court, the rights of the parties litigant depend upon the decision of precisely the same question as is involved in the case of Ryan vs. Carter, 93 U. S., 78, except that in the case of 21 Wallace the Court expressly held that

the legal title to the particular land passed to the grantee immediately upon the survey being made. In that case the Act of Confirmation by Congress contains a provision relating to the survey of the confirmed grant substantially the same as that contained in the Act of 1852 of Texas. One Tongas had a survey of his confirmed grant made in 1820 but no patent issued until 1872, when one issued reciting the Confirmation by the Act of 1807 of the report of the Commissioner, appointed under the Act of 1804. The patents purported to "give and grant" to the heirs of Tongas, in fee, the tract in qeustion. The defendant claimed as tenant under one Law, who for more than thirty years had been in the actual possession of the premises under claim and color of title made in good faith. By the law of Illinois such a possession constitutes a bar to any adverse claim.

The precise point decided by the Court below was (page 523):

> "1st. That the Act of Confirmation of 1807 was a "present grant, becoming so far operative and com- "plete, to convey the legal title when the land was lo- "cated and surveyed by the United States in 1820, as "that an action of ejectment could be maintained on "the same.
>
> "2nd. That the patent was not of itself the grant of "and by the United States, but only the evidence that a "grant had been made to the heirs of Jean Babtiste "Tongas.
>
> "3rd. That as Law went into the possession of the "land under claim and color of title made in good faith "and had held possession for more than seven success- "ive years, and during that time had paid all the taxes "legally assessed upon the land before the commence- "ment of this suit, it was a bar to a recovery by the "plaintiff."

It was this ruling of the Court below that this Court approved and affirmed, thus holding that the grant became complete and operative and conveyed the legal title when the land was located and surveyed by the United States in

1820, and the issuance of the patent was merely an evidence of the right. In determining the effect of the patent and the survey under the congressional legislation, the Court says:

> "In the legislation of Congress a patent has a double "operation. It is a conveyance by the Government "when the Government has any interest to convey, but "where it is issued upon the confirmation of a claim "of a previously existing title it is documentary evi- "dence, having the dignity of a record, of the existence "of that title, or of such equities respecting the claim "as justify its recognition and confirmation. The "instrument is not the less efficacious as evidence of "previously existing rights because it also embodies "words of release or transfer from the Government. In "the present case the patent would have been of great "value to the claimants as record evidence of the an- "cient possession and title of their ancestor and of the "recognition and confirmation by the United States, "and would have obviated in any controversies at law "respecting the land the necessity of other proof, and "would thus have been to them an instrument of quiet "and security. But it would have added nothing to the "force of the confirmation. The survey required for "the patent was only to secure certainty of description "in the instrument, and to inform the Government of "the quantity reserved to private parties from the do- "main ceded by Virginia."

In the case of Morrow vs. Whitney, 95 U. S., 551-555, the cases of Landau vs. Haines, 21 Wallace, 521, and Ryan vs. Carter, 93 U. S., 78, are cited and reviewed. And it is again held that the Act of Confirmation passed the title to the land. It is also held that where the confirmed grant appears to have clearly defined boundaries, or which are capable of identification, a subsequent survey and patent was unnecessary to perfect the claimant's title and would only serve as documentary evidence thereof. In determining, however, the effect of a survey by the Government Surveyor under the Act of Confirmation the Court holds that:

> "It would have removed the doubt as to the boun- "daries of the tract which always arise where their "establishment rest on the uncertain recollection of wit- "nesses as to ancient possession."

In the case of Clark vs. Hills, 67 Texas, 141, also cited by the Court of Civil Appeals, the Ponce de Leon grant was confirmed by the Act of February 11th, 1858, but no survey thereof was made by the Official Surveyor as provided for in the second section of the Act. The grantee, electing to rely upon the Act of Confirmation as conclusive on the question of title and upon proof of the original boundaries as established under the Mexican grant, rather than upon a re-survey under the Act of Confirmation. The Court reviews the cases of Ryan vs. Carter, Landau vs. Haines, West vs. Cochran, Waterman vs. Smith, 13 Cal., 733, and Morrow vs. Whitney, and correctly holds that under the authority of those cases the confirmation was not limited, impaired or conditioned by the provisions of the second section of the Act with reference to the survey of the land, but that the owner of the grant could make proof of the original boundaries, and claim title to all the land included therein. In passing, however, upon the question as to the purpose and effect of the survey, if it had been made under the second section of the Act of Confirmation, the Court says:

> "The survey and patent were required to secure cer-
> "tainty in the description of the land and to furnish the
> "owners with the highest evidence of the validity of
> "their claim to the extent of the boundaries described
> " in the patent. These, according to the Statutes, were
> "to be the same as those contained in the original grant,
> "and to include precisely the same land granted by the
> "Mexican authorities. The patent would be the high-
> "est evidence as to this. But in case no patent there-
> "after issued, or survey was made, the right of the
> "grantee or his assigns was not lost, but they were
> "forced to bring other proof as to the location of the
> "boundaries of the land described in the grant. The
> "survey was of use to the State also, as by it the metes
> "and bounds of the land would be so well defined as to
> "show with certainty what land, by reason of this
> "grant was not subject to future appropriation. But
> "if this had been a matter of vital importance, the Leg-

"islature would have doubtless required the survey to "have been made, and the field notes returned within "a limited time, or would have declared the land for- "feited unless the survey was made. In the cases "where a grant of a former government is confirmed "the survey becomes important, only when the lands "have not been previously surveyed, so as to segregate "it from the adjoining territory, or when the descrip- "tion of the land is so vague as to require a survey to "designate and fix its boundaries with certainty."

This completes a review of the cases cited by the Court of Civil Appeals in support of its holding in this case, that the State was not bound by the re-survey under the Act of Confirmation, and it is confidently submitted that the Court of Civil Appeals has, in some strange and unaccountable way, so entirely misunderstood the force and effect of the decisions in the cases cited as to have turned them end for end in the attempted application thereof to this case. There is certainly nothing in any of these cases to indicate that this Court or the Supreme Court of Texas has ever intimated that when a boundary in which the Sovereign and an individual are interested has been settled by solemn agreement, it can be reopened or unsettled at the suit of either of the parties to the agreement.

In the case of Commonwealth vs. Pejepscut, 10 Mass. 156, the Attorney General of the State of Massachusetts attempted to recover certain lands, which were the subject of the suit, by introducing evidence tending to disturb boundaries which had been established by resolutions passed by the legislative body for the Province of Massachusetts Bay in 1787. In the statement of the case it appears that:

"The counsel for the defendants objected to the ad- "mission of any such evidence, and contended that the "said resolve of March 8th, 1787, was sufficient in law "to estop the commonwealth from showing any evi- "dence of the facts which the Attorney General of- "fered to prove as aforesaid. And after hearing the "said Attorney General in reply, the judge who sat in

"the trial gave his opinion that the said resolve was suf-
"ficient, etc., and the evidence was accordingly re-
"jected."

The Court, in passing upon the effect of the legislative enactment, said:

"An Act of this kind, directly applicable to the rights
"and claims of individuals, and explicitly referring to
"them, has the effect of a confirmation or grant, or of
"a private statute for their direction and relief. A
"legislative decision in such case may not be conclusive
"upon the individuals concerned, supposing it rejected
"by them for good cause, or that an adverse claim
"should be afterwards maintained, upon further evi-
"dence that the Legislature may have had to influence
"their decision. And it might be competent for the
"Legislature, when their decision had not been accepted,
"or discovering any mistake or deception, to avoid their
"grant, or to annul their decision, by repealing the le-
"gal provision which they had enacted.

"In the case at bar, however, there is no averment
"or evidence offered, of any rejection by the defendants
"of the provision made for them by the Legislature.
"Their acceptance of it, their concurrence as virtually
"parties to it, may be presumed until an express dissent
"is proved, and their pleading, and relying upon it in
"these proceedings render the act conclusive upon them.
"And we may add that the Act has not been repealed,
"and in directing and authorizing informations against
"these defendants, to bring into question their title to
"the lands demanded, other motives are avowed than a
"disposition on the part of the Legislature to avoid their
"act of March, 1787. Evidence of the kind thereby es-
"tablished must be regarded as of too high a nature to
"be contradicted by other proof, particularly when of-
"fered in the name of the party, high and respectable as
"it is, by and for whom the former declaration and act
"still remaining in force, has been made. Of a com-
"mon person we should say: *Allegans contraria non*
"*est audiendus.*"

The same general doctrine runs through every case that has ever been decided by any court. Indeed, the very cases which the Court of Civil Appeals cited to support its holding that the Plaintiff in Error is bound by the survey

and patents of the grants lying to the east and west of the Santa Rosa de Arriba, and cannot claim any land not included within the patents, although it may have been within the original grants, are all decided and based upon the principle announced in Menard's Heirs vs. Massey and the other cases above cited.

It may be proper to here explain that the Plaintiff in Error, through purchase from D. R. Fant, the original defendant, is, as shown in the foregoing statement, the owner of surveys made in the name of the Gulf, Colorado & Santa Fe by the Official Surveyor in 1881; calling for the said surveys to abut the Santa Rosa de Arriba grant on the east. Those surveys were duly patented, and by the calls in the patents make their western boundary lines coincident with the eastern boundary line of the grant in controversy. The Plaintiff in Error is also the owner of the Encinal and El Tule confirmed grants, which, under the proceedings of confirmation, had been re-surveyed by the Official Surveyor, calling for their eastern boundary lines to be coincident with the western boundary line of the grant in controversy. These surveys were also patented by the State, on the field notes of the re-survey under the confirmation. The contention of the Attorney General, which was upheld by the State courts, was that the Santa Rosa de Arriba grant should be confined to its boundaries as established by the Surveyor General of the State of Tamaulipas under the original grant, and that when so confined it will not reach the Gulf, Colorado & Santa Fe surveys on the east, nor the El Tule and Encinal on the west, and that the State was entitled to recover the land lying between the eastern boundary line of the grant in controversy, as established by the Mexican surveyor, and the western boundary lines of the Gulf, Colorado & Santa Fe surveys, as established by the official surveys and patents from the State of Texas; and also the land lying between the western boundary line of

the grant in controversy, as fixed by the original grant, and the eastern boundary lines of the Encinal and El Tule grants, as fixed by the confirmatory surveys and patents thereof by the State of Texas. It was conceded by the State that the most westerly strip of land recovered by it in this case was included within the boundaries of the Santa Rosa de Arriba, the Encinal and the El Tule grants, as originally made by the State of Tamaulipas, as these grants call to adjoin each other and to take up all the territory lying between their outermost boundaries. It was, however, contended by the State that the boundary lines of the Gulf, Colorado & Santa Fe surveys had, by the surveys and patents thereof, and the boundary lines of the El Tule and Encinal grants, by the survey and patents thereof under the Confirmation, been fixed and adjusted, so as to conform to the re-survey of the Santa Rosa de Arriba by Felix A. Von Blucher in 1859. That in this way the western boundary lines of the Gulf, Colorado & Santa Fe surveys were fixed and established to the eastward of the western line of the Santa Rosa de Arriba grant, and the eastern boundary lines of the El Tule and Encinal to the westward of the true western boundary line of the grant in controversy. The State further contended that by accepting the surveys and patents to the Gulf, Colorado & Santa Fe surveys, and by accepting the re-surveys and patents of the El Tule and Encinal grants, the Plaintiff in Error and his predecessors in title were bound thereby, and could not claim any land which was not included within the re-surveys and patents of the two last named grants, even though it may have been included within the boundaries of the grants as originally made by the State of Tamaulipas. This contention the Court of Civil Appeals expressly upheld, in the following words:

"The holding of the Court in confining the surveys "situated on the east and west of the Arriba to their

"boundaries as patented was correct. The owners of "the surveys, by the acceptance of the patents, relin- "quished all claim to any land that may have been in- "cluded in the grants confirmed, but not included in "their patents."

In the same opinion the Court denied the contention of the Plaintiff in Error, that the State was bound by the re-survey, under the Act of Confirmation, of the Santa Rosa de Arriba.

In other words, the Court holds that the State is not in any way bound by the re-survey made by its chosen and designated Official Surveyor, if he stepped one foot beyond the boundaries of the original grant, but the owner of the grant is bound, if he causes the survey to be made, and the surveyor leaves out a part of the original land. On the eastern side the owner loses the land because the survey of the Santa Rosa de Arriba was, as the State contends, incorrect, and included land which was not originally within the boundaries of the grant, as made by the Mexican Government, and the State is therefore not bound by it. On the western side the owner of the grant loses the land because the survey by the Official Surveyor is incorrect, in that it leaves out land which was admittedly included within the boundaries of the grant as it was made by the Mexican Government, and the owner is bound by it. The Court of Civil Appeals was clearly right in holding that the owners of the grant are bound by the re-surveys and patents, and all of the cases support this holding. There is, however, absolutely no principle of law, which has the slightest foundation or support in reason or authority, which will permit the State to escape from its solemn agreement to be bound by the re-survey of the land in controversy. The Court of Civil Appeals cites, in support of its decision that the claimant is bound by the re-survey and patent, the case of United States vs. Roselius, 15 How., 31; Arguella vs. United States, 18 How., 546; Forbes vs. Withers, 71 Texas, 302,

and might have cited many other cases, some of which have been heretofore referred to, for, as will appear from a review of the cases cited by the Court, they rest upon and the decisions are governed by precisely the same principle which is announced, and many times reiterated in the cases upon which Plaintiff in Error relies.

In the case of United States vs. Roselius, 15 How., 34, cited by the Court of Civil Appeals, this Court says:

> "Nothing can be fraught with worse consequence "as regards confirmations by Congress or by Commis- "sioners acting by its authority, than to hold, that "when a doubtful claim was confirmed on certain terms "and the claimant accepted those terms and took the full "benefit of the confirmation, that still he could come "into the courts of justice and enforce his entire claim "for the deductions made by Congress, as if no adjust- "ment had been made. Such cases must stand on the "footing of compromise, and all equities existing when the compromise was made, and not provided for by it, "must be deemed to have been abandoned. If it were "otherwise, then there would be no end of these preten- "sions to compensation, before Congress and the courts. "But to hold that the confirmation was final, and con- "clusive of the whole claim (as we think it clearly was), "then the county will, at last, find repose, and the "cultivator of the soil will know from whom to buy, and "take title."

In the case of Arguello vs. United States, 18 How., 539, also cited by the Court of Civil Appeals, this Court, after citing certain proceedings had to ascertain the exact boundaries of the grant in question, said:

> "Here we have the first proceeding which can oper- "ate as an estoppel on either party. The king may be "estopped by his deed, and the appellants by accepting "as a definitive title to the Las Pulgas, a deed exclud- "ing the valley of the Rayundo, are estopped from as- "serting that it is included in their grant. Here for "the first time we have a juridical investigation to as- "certain and fix the boundaries of Las Pulgas. A "name which heretofore represented an unknown quan- "tity had been reduced to certainty. This grant has

"been registered among the public archives accepted by "the claimants, and possession delivered accordingly. "Having thus, by a regular juridical proceeding, ascer- "tained the boundaries and quantity of land repre- "sented by the name of Las Pulgas, the valley of Ray- "mundo being without the boundary so fixed is in 1840 "granted as public land to Coppinger.

"There is no evidence to show either fraud or mis- "take in these proceedings. The appellants have got "Las Pulgas by a valid title according to the bounda- "ries ascertained by proper public authorities, and can- "not now be permitted to recur to vague traditions of a "vague and uncertain boundary, to unsettle the titles "to a large territory since granted to others."

In the case of Forbes vs. Withers, 71 Texas, 472, the only other case cited by the Court of Civil Appeals to support the proposition that the grantees are bound by the surveys and patents, it is held that the filing of a land certificate is the initiatory step provided by the statutes for the acquisition of public land by the holder of a certificate, and is merged in the survey, and that therefore in determining what land was granted by the patent reference will be had to the survey actually made and not to the file.

The appellant has never at any time, and does not now question the soundness of the principles announced in the three last cases cited. Indeed, he has throughout this litigation, and does now earnestly insist that the rule of decision which underlies these cases shall be applied in this one.

It certainly must be perfectly apparent to the Court that the cases of Menard's Heirs vs. Massey, Guitard vs. Stoddard, Bryan vs. Forsyth, West vs. Cochran, Ryan vs. Carter, Langdeau vs. Haines, Morrow vs. Whitney, United States vs. Roselius, Arguello vs. United States, Clark vs. Hills, Forbes vs. Withers and Commonwealth vs. Pejepscut Prop., are all in perfect harmony, and that there is not a shadow of conflict discoverable in the entire line of cases.

It is respectfully submitted that a review of these cases

leads to the conclusion that the following principles of law, as applicable to cases of this character, are established by an absolute unanimity of decision.

1. In cases where a grant of a former government is confirmed on condition that the grantee will have the boundaries ascertained in the manner described by law, a failure to have the survey made operates as a forfeiture of the confirmation. (West vs. Cochran, *supra.*)

2. In cases where a grant of a former government is confirmed unconditionally by the Act of Confirmation, containing the provisions for a re-survey, but prescribes no penalty or forfeiture for a failure to have such re-survey made, the grantee may elect to rely upon his boundaries as established by the original grant of the former government, or to pursue the means prescribed by the Legislature for fixing its boundaries. (Ryan vs. Carter, Clark vs. Hills and other cases cited above.)

3. In cases where a grant of a former government is confirmed the re-survey becomes important in the following character of cases:

(a) When lands have not been previously surveyed. (Clark vs. Hills.)

(b) When the description of the land is so vague as to require a re-survey to designate and fix its boundaries with certainty. (Clark vs. Hills.)

(c) When it will serve to remove the doubt as to the boundaries of the tract, which always arise when their ascertainment rests in the uncertainty of the memory of witnesses as to anicent possession. (Morrow vs. Whitney.)

4. In cases where the grant of a former government is confirmed by legislative enactment which provides for a re-survey for the purpose of ascertaining the exact boundaries, and prescribes the manner in which, and the official by whom, the said re-survey shall be made, the Courts are bound by the legislative decision that the case belongs to one

of the classes in which a re-survey is important and useful to the government and the grantee. (West vs. Cochran.)

5. In cases where a grant of a former government is confirmed by legislative enactment which contains a provision for a re-survey for the purpose of ascertaining its boundaries, and prescribes the instrumentalities and the public official by whom such survey shall be made, and such survey is made by the officer designated, the act of confirmation becomes so far operative and complete as to convey the legal title to the land included within the re-survey. (The decision of the trial court in the case of Langdeau vs. Haines, affirmed by this Court.)

6. Such a survey is conclusive evidence against the government that the lands granted by the confirmation are the same described and bounded by the survey. This construction depends on the fact that the claimant and the United States were parties to the selection of the land and were mutuallly bound and estopped by it. (Menard's Heirs vs. Massey, Guitard vs. Stoddard, Bryan vs. Forsyth). If accepted by the grantee such survey is for the same reason conclusive evidence aginst him that the lands granted by the confirmation were the same described in the re-survey. (United States vs. Roselius, 15 How., 34; Arguello vs. United States, 18 How., 539).

The sole qualification to this rule is that the survey could be impeached by either party by timely allegations and proof of fraud. (White vs. Burnley, 20 How., 247).

7. In cases where the Legislative Enactment confirming the grant of a former government and providing for a re-survey under the confirmation and authorizing a patent to thereafter issue on the resurvey, the grantee's title to the particular land is perfected when the survey is made, and the legislative grant became complete to that particular land upon the making of the re-survey. The patent is not necessary to perfect the grantee's title, nor does it add any-

thing to that title. It only serves as evidence of the grant. (Langdeau vs. Haines, Clark vs. Hills).

It is also most respectfully submitted that an application of the above stated and well established principles to this case demonstrates the correctness of Plaintiff in Error's contention, which is so well stated by the Court of Civil Appeals, in these words:

> "That the provisions of the Act of 1852, confirming "the grant under which they claim, providing for a "re-survey of the land embraced in said grant, consti- "tuted a valid and binding agreement on the part of the "State, with the owners of said grant, that they should "acquire and be entitled to the land embraced in the "survey made in pursuance of the provisions of said "Act."

It is quite true, as stated by the Court, that inasmuch as the grant was confirmed unconditionally, the grantee's right to whatever land was included in the boundaries of the grant, as originally made, was not dependent upon the resurvey. This is well settled by all the authorities. It is, however, equally well settled that when the Legislature provided that a re-survey might be made, if the grantee so elected, it was thereby conclusively determined that this grant and all others mentioned in the Act of Confirmation belonged to the class wherein a re-survey was important and desirable in order to designate and fix their boundaries with certainty. It was for the Legislature alone to decide whether the previous survey under the Mexican grant was or not sufficient for that purpose. It is also well settled by the authorities, that where the grantee elects to have the survey made, and it is made by the officer designated in the Act of Confirmation, it becomes conclusive evidence, in the absence of allegations and proof of fraud, both against the State and claimant that the lands granted by the confirmation "were the same described and bounded by the survey." The law is thus settled, not

because the surveyor is any more the agent of the State than he is of the claimant, but, as stated by the Court, because the claimant and the State "were parties to the selection of the land, and were mutually bound and respectively estopped by it."

The Supreme Court of Texas has repeatedly held, in the case of Howard vs. Perry, Hamilton vs. Avery and Wright vs. Hawkins, above cited, and many other cases familiar to this Court, that a survey by the Official Surveyor, designated by law, the field notes of which are returned to the General Land Office, as the law requires, creates a vested right, and that the field notes of such a survey, when duly returned by the official surveyor, forms one of the muniments in the title of the claimant.

It is earnestly insisted, upon behalf of the Plaintiff in Error, that the Act of February 10, 1852, was, under all of the authorities, an offer made in good faith by the State of Texas, in its sovereign capacity, to refer by agreement to the Official Survey or the duty of definitely ascertaining the precise land to which the owners of the confirmed grants should acquire title under the Act of Confirmation. Such offer, when accepted and acted upon, constituted a valid and binding contract between the State and the owners of the grants. The acceptance was completed when the claimant caused a survey to be made by an officer designated by law and the field notes of such survey to be returned to the General Land Office. When this was done, as it was in this case, both parties to the transaction were under every known principle of law or justice, bound by their solemn agreement thus entered into. To hold, as does the Court of Civil Appeals in this case, that "the contract or agreement embraced in the Act of Confirmation upon the part of the State only extends to a relinquishment of the land embraced in the original grant," is to hold that the provisions of the Act of Confir-

mation, which requires the survey, is worse than meaningless, and a compliance therewith would be the doing of a fruitless thing. Under this rule the survey would only be given its effect in the event the interested parties, the State and the claimant, should forever thereafter be prepared to prove that it corresponded with the boundaries of the original grant, and in such a case there would be absolutely no need of a re-survey. The result would be to disregard it in every case in which it would be of any service, either to the State or to the land owner; for, in every case in which at this late day it should be discovered that the original land marks had disappeared, or in which there was a possibility of creating a conflict in the evidence as to their location or identity, the re-survey under the Act of Confirmation, would be set aside and disregarded and the whole matter would rest upon the uncertain recollection of the witnesses. Thus, it would result that the Act of Confirmation and the proceedings thereunder have failed of their manifest and only purpose, which was to absolutely and forever settle the title to the grant in question and the boundaries thereof.

The Court of Civil Appeals, both in its original opinion and in that handed down on the Motion for Re-hearing, intimates in a somewhat uncertain and qualified manner that it was of the opinion that the State might escape from the binding force and effect of the contract relied upon by the Plaintiff in Error, on the ground that the re-survey by Blucher had not been accepted by the State.

It is, however, with the utmost respect for the learned Court of Civil Appeals, suggested that in the portions of its opinion which relate to this subject there is an apparent inconsistency. In one portion of the Court's opinion the facts are discussed which are supposed to indicate a rejection of the re-survey by the Commissioner of the General Land Office. In another portion of its opinion it discusses

these facts which tend to show his acceptance thereof. In one place the Court uses the following language:

> "In fact, there is evidence tending to show the disap-
> "proval by the State of the Blucher survey. The
> "endorsements on the field notes thereof, above quoted,
> "and the failure to patent the land according to said
> "survey, are evidence of this character."

Elsewhere in the opinion the Court says, with relation to the delineation of the grant on the maps of the General Land Office:

> "But, conceding that it (the delineation) was in-
> "tended to represent the Blucher survey, such delinea-
> "tion was simply the unauthorized act of a ministerial
> "officer, which could not bind the State."

It would seem to be the settled law, under all the authorities, that no other power was conferred upon the Commissioner of the General Land Office than that which pertains to a ministerial officer. Insofar as the Court of Civil Appeals in the last above quotation from its opinion so holds, its ruling is supported by all the authorities. If this is true, then three deductions must inevitably follow: (1) The Court of Civil Appeals was in error in holding that by any endorsement placed upon the field notes of the Official Surveyor, or by a failure to issue a patent thereon, the Commissioner of the General Land Office, or any clerk in his office, had power to disapprove this survey; (2) The issuance of a patent by a ministerial officer—that is, the Commissioner of the General Land Office—would not have affected the claimant's title, but would have been mere documentary evidence thereof; and (3) The grantee's title to this particular piece of land was perfected by the re-survey and the return of the field notes thereof to the General Land Office, and was not affected or impaired by the non-issuance of the patent. Indeed, the Court of Civil Appeals, in its opinion in the Corrigan

case, with seeming forgetfulness of what it had said in this case with relation to the rejection of this survey by the Commissioner of the General Land Office, also recognizes the fact that under the law his duties were purely ministerial, and distinctly holds that, "The ministerial act of issuing a patent would not affect the legal title already in existence."

In the very nature of things, the duties imposed upon the Commissioner of the General Land Office by the Act of Confirmation was purely ministerial. There was no possible way for the Commissioner to determine whether the re-survey conformed to the original grant or not. The determination of that question was committed by law to the Official Surveyor. The fact that the patent did not issue could not be considered as any evidence tending to show that any one having authority to do so had disapproved this survey. On the other hand, since the issuance of the patent would not add anything to the grantee's title, if the Plaintiff in Error's title in this case is subject to attack, it is certain that in the same manner and by the same character of proof, any confirmed grant can be placed in peril and destroyed, even though a patent has issued upon the re-survey. That this is the indubitable result of the ruling of the Court of Civil Appeals in this case is shown by the fact that in the Corrigan case the same court holds that the issuance of the patent adds nothing to the sanctity and conclusiveness of the transaction.

It must be apparent from the reading of the Act of February 10, 1852, that the power to accept or reject this survey was not committed to the Commissioner of the General Land Office, or any other officer, but was exercised in the Act itself, by the Sovereign itself. The Act, in plain and unmistakable language, which admits of no other construction, states, in effect, that the survey by the Official Surveyor, at the request of the claimant, shall be and is

hereby accepted. True, this, like every other transaction, is subject to be set aside, annulled, disregarded and vitiated by allegations and proof of fraud, (White vs. Burnley, 20 How., 247.), but in this case there is no allegation or proof of fraud. It is contended by the State that the Blucher survey was incorrect and does not conform to the boundaries of the original grant. The Commissioner of the General Land Office was not given the power to inquire into this question, and had no right or authority under the law to reject the survey.

It is, however, most respectfully submitted that there is absolutely nothing in the record to indicate that the Commissioner of the General Land Office assumed any such authority or power. Indeed, if the endorsements in pencil on the field notes referred to by the Court of Civil Appeals can be construed into an intimation that the examining clerk of the Land Office thought that the field notes were in any respect incorrect, then these very endorsements are in themselves evidence that the Commissioner of the General Land Office understood that this was a matter with which he had no concern and with relation to which he had no authority, for the undisputed evidence shows that he, notwithstanding the endorsements on the field notes, platted the re-survey on the maps of the General Land Office, as he was by law directed to do. The Act of Confirmation provides that, "Upon the return of the field notes thereof (the survey) to the General Land Office, the Commisisoner is hereby authorized and *required* to have the same platted on the maps in his office, and issue patents to the same in accordance with the existing laws, and provide that no patent shall issue for less amount than the original grant." The Commissioner simply performed the duty imposed upon him by law, as a ministerial officer, when he delineated the re-survey upon the maps of his office. The Court of of Civil Appeals seems to be of the opinion that

the endorsements signed by Richardson are an indication that this particular examining clerk assumed the power to disapprove the survey because it included more than six and one-half leagues of land. Aside from the fact that the clerk had no such power, (Thompson vs. Railway, 68 Texas, 392) the fact that he did not assume to have is capable of mathematical demonstration. This endorsement indicates no more than the examining clerk's calculation of the area contained in the Blucher field notes did not correspond with Blucher's calculation of the area. Blucher stated that the survey contained eight leagues and twelve labors. Its area should, therefore, have been 212,300,000 square varas. According to the calculation of the examining clerk in the land office, as reflected by his endorsement, it contained 55,262,958 square varas more than eight leagues and twelve labors. The endorsement, therefore, does not purport to criticise the survey because it contains more land than the grant was confirmed for, nor does it attempt to disapprove the survey on that ground, but it purports to be and is in fact nothing more than a statement of the difference between the two calculations of the area of the grant as re-surveyed, the one by Blucher and the other by Richardson. In this connection the Court will note the provision of the Act of Confirmation in which the Legislature provides, in express terms, that the quantity of the land is not to be considered, except for the purpose of seeing to it that the grant is given no less than the amount for which it was originally made. The learned Court of Civil Appeals, in the Corrigan case, comments upon this provision of the law and upon the well known historical fact that at and prior to the date of the passage of the Act of Confirmation of 1852, land was considered of little value, and quantity was not nearly of so much importance as certainty. The broad and liberal view, as expressed by the learned Court of Civil Appeals in its opinion

in the Corrigan case, wherein it cites with approval the case of United States vs. Sutherland, 19 Howard, 364, is in notable contrast with the importance which the same court attaches to the excess in the grant in this case, and the repeated reference made to this excess by the Court in support of its decision in this case, whereby it upholds the recovery by the State of all the excess in the grant in controversy.

It is respectfully submitted that, under no construction which can be placed upon the Act of 1852, did the Commissioner of the General Land Office, or any of his clerks, have the power to disapprove the re-survey of the grant in controversy by the Official Surveyor, nor can the fact that the Commissioner failed to perform his full duty and issue the patent to the grant, nor the fact that the re-survey contained a larger area than the original grant was described as containing, nor the fact that a clerk in the Land Office reviewed the calculation of the Official Surveyor as to the area contained within the re-survey, weigh as much as a feather's weight against the binding force and effect of the contract between the State and the land owner by which the boundaries of this grant were settled by the re-survey by the Official Surveyor and the return of the field notes of such re-survey to the General Land Office.

It may be proper to notice the qualified intimation contained in the opinion of the Court of Civil Appeals on the original hearing, that the delineation of this grant upon the maps of the General Land Office *may* not have been intended to represent the Blucher survey, but "may have been intended to represent the survey as originally made, confirmable to the grant for six and one-half leagues."

It should be quite a sufficient answer to this suggestion by the learned Court to say that when the Commissioner of the General Land Office delineated this grant upon his official maps, he will, in the absence of some proof to the

contrary, be conclusively presumed to have been acting within his authority and to have been performing a duty which had been imposed upon him by law. He had no authority, in his delineation of this grant upon the maps, to attempt to make it conform to the original Mexican grant. He was only authorized to delineate on his own maps the re-survey by the Official Surveyor. That this was in truth what he did, and that the learned Court of Civil Appeals was in error in suggesting that he *may* have been doing something else, will become apparent by a mere glance at and comparison of the map which Blucher sent up with the field notes of his re-survey, following page 32 of the transcript, and the map made by the same Official Surveyor, dated January 11, 1869, showing this and a large number of other grants in the same vicinity, and the Official Map of the General Land Office, dated July 13, 1875. The originals of the last two maps have been sent up with the record, under the order of the Court, and copies thereof are found in the back of this brief. An inspection of these maps will show that the map of this grant made by Blucher in 1859, with all of its surroundings and distances, was carried into his map of 1869 and into the General Land Office map of 1875. In order to show that the Court of Civil Appeals was mistaken in supposing that there was any uncertainty or controversy as to this issue, we beg to be permitted to quote from Page 35 of the Brief on behalf of the State of Texas, filed by the Attorney General, in the Court of Civil Appeals, the following words:

> "This map is certified by Groos, Land Commissioner, "to be a true copy of the original on file and in use "in the General Land Office (1875), and as delineated "on the map, the Santa Rosa de Arriba appears to be "an exact reproduction of the map made by Blucher "accompanying his field notes . . "

It is deemed proper to suggest, before leaving this subject, that the facts disclosed by the record bearing upon the

action of the Commissioner of the General Land Office, with relation to the delineation of this grant upon his official maps, is wholly immaterial to the true issues involved in this case. It was, by the Act of 1852, made his imperative duty, in the exercise of which he had no discretion, to delineate the re-survey upon the maps of his office. If the proof in this case had indubitably shown that he failed to perform this duty, instead of showing exactly to the contrary, still the rights of the Plaintiff in Error would not in any manner have been affected by such dereliction. The contract between the State and the land owner, under which the boundaries of the grant in question were forever established and settled, consists of the Act of 1852 and the re-survey thereunder and the due return of the field notes of such re-survey to the General Land Office. This contract was a completed and executed transaction before the Commissioner of the General Land Office was in a position to perform his duty with relation to the delineation of the grant upon the maps of his office, which was imposed upon him by the directory provisions of the statute.

The decision, therefore, of this case must, in this Court, as in truth it was in the State Court, be controlled by the construction placed upon this completed agreement between the State and the land owner. It is apparent that none of the questions discussed nor suggestions made by the learned Court of Civil Appeals in its opinion in this case would have influenced the decision thereof if the Court had construed and enforced this contract according to its plain import and manifest purpose. The Court recognized, and in express terms held that a contract existed, and that under it certain obligations were imposed upon the parties thereto, but construed the contract as binding the State only with relation to such land as was included within the original grant, and as expressing no agreement on the part of the State with relation to the re-survey. In other words,

the Court, in effect, held that Section 2 of the Act formed no part of the contract, and that hence the Attorney General, acting under authority of Section 11 of the Act of 1901, was at liberty to proceed in this action as though no agreement had ever been made with relation to the boundaries of this grant. It was this ruling which was decisive of the case, and it is this ruling which is now before this Court for review.

It was most earnestly contended in the State Court on behalf of the Plaintiff in Error that there was absolutely nothing in the Act of September 23, 1901, or in any other legislation of the State of Texas bearing upon the subject, which indicated that it was the purpose of the Legislature to disturb the titles of the owners of the confirmed grants to any of the land embraced within the re-surveys as made by the officer thereunto authorized by the Act of Confirmation. Indeed, the entire legislation of the State, from its earliest period down to and including the Act under which this suit was brought, bespeaks a well defined and settled policy to the contrary. Some of the laws bearing upon this subject confirmed specific grants, and others authorized suits to establish the existence of the boundaries thereof, but all provided for a re-survey, thus leaving no doubt as to the Legislative intent and desire to have all questions of boundaries forever settled. This is apparent from the entire Legislative history upon this subject, and is emphasized by the provisions of Section 8, Article 14, of the present Constitution of Texas, which gives expression to this well defined policy and at the same time makes prominent the importance which the State attaches to the re-surveys and its anxiety to have the same made and the field notes thereof returned to the General Land Office.

This Section of the Constitution provides that:

"Persons residing between the Nueces River and the "Rio Grande, and owning grants of lands which ema-

"nated from the government of Spain, or that of Mex-
"ico which grants have been recognized and validated
"by the State, by acts of the Legislature, approved
"February 10, 1852, August 15, 1870, and other acts,
"and who have been prevented from complying with
"the requirements of said acts by the unsettled con-
"dition of the country, shall be allowed until the first
"day of January, 1880, to complete their surveys and
"the plots thereof, and to return their field notes to
"the general land office. . . . . "

It was earnestly insisted that there is no where to be found the slightest intimation of the legislative intent to authorize suits on behalf of the State to inquire into the correctness of surveys made under the Acts of Confirmation, whereby the title to lands, which have been for nearly fifty years recognized as private property, and which have been for nearly a quarter of a century under fence, should be disturbed. That the State, in its sovereign capacity, had never at any time evinced the slightest disposition to repudiate these contracts or destroy the vested rights acquired thereunder. That in construing Section 11 of the Act of September 23, 1901, the Court should have said of the great State of Texas that which was said of the State of Massachusetts in the case of Commonwealth vs. Pejepscut, supra, that in directing suits to be brought by the Attorney General, in the carefully guarded cases specified in the Act of 1901, other motives should be attributed to the Legislature than a disposition on its part to undo anything that had already been done under the State's authority.

The Court of Civil Appeals, however, took a contrary view of this question, and construed the Act of 1901 as especially authorizing this suit and the recovery herein, and, as thus construed, the Act of 1901, impairs the obligations of the contract entered into under the Act of 1852. (Houston & Texas Central Ry. vs. Texas, *supra.*)

In the case last cited, the State Court so construed and

enforced an Act of the Legislature of the State of Texas of 1870, as to result, by the recovery in the case, in the impairment of the obligations of a contract which had been entered into under previous laws of the State. This court says:

"In giving judgment for the plaintiff, therefore, the "court has in effect determined that the plaintiff was "proceeding rightly under the Act of 1870, and effect "was thus given to its provisions. . . . . .

"Thus we see that, although the decision of the state "court was based upon the ground that the warrants in "which these payments were made had been issued in "utter violation of the state constitution, and were "hence void, and that no payments made with such war- "rants had any validity, and although this ground of "invalidity was arrived at without any reference made "to the act of 1870, yet the necessary consequence of "the judgment was that effect was thereby given to that "act, and in a manner which the company has always "claimed to be illegal and unwarranted by the act when "properly construed (77). The company has never "accepted such a construction, but, on the contrary, has "always opposed it, and raises the question in this pro- "ceeding at the very outset. Upon these facts this "court has jurisdiction, and it is its duty to determine "for itself the existence, construction and validity of "the alleged contract, and also to determine whether, "as construed by this court, it has been impaired by "and subsequent state legislation to which effect has "given by the court below. . . . . .

"If the State had passed no act, the question of con- "tract could not have been raised in this court, the pay- "ments migth have been repudiated, and the court have "held them illegal, and we would have no jurisdiction to "review its judgment. But the State has passed a statute "and said that if the Company would pay interest and "a certain proportion semi-annually upon the aggre- "gate amount of the loan as it stood May 1, 1870, no "further exaction would be made. The court has con- "strued this to mean that if the company will pay such "proportion semi-annually on the amount of the loan, "to be ascertained by striking out the payments in war- "rants, then no default will be incurred, but if not, then "it will have made default, and the act of 1870 provides "in such case for proceedings to collect the amount due. "We say the court below has so construed the act, and "we say so notwithstanding it has not mentioned it in

"any such connection. It has said so, however, by im-
"plication necessarily arising from the judgment it has
"given when taken in connection with the provision of
"the act which permits proceedings only to be taken on
"a default, which does not exist in this case if the com-
"pany be credited with these warrants as payments.
"By permitting the proceedings the court has necessar-
"ily construed the act as meaning that there is a default
"when payments are not made on the basis of the inva-
"lidity of the payments in warrants. The obligation of
"the contract which we hold existed between the State
"and the Company growing out of the transactions
"mentioned has therefore by this construction of the act
"by the state court been materially impaired."

Respectfully submitted,

CHAS. W. OGDEN,

J. C. SULLIVAN,

For Plaintiff in Error.

APPENDIX.

ACT OF FEBRUARY 10, 1852. . .

"AN ACT TO RELINQUISH THE RIGHT OF THE STATE TO CERTAIN LANDS THEREIN NAMED.

"Art. 4461. (1) The State of Texas hereby re- "linquishes all her right and interest in the following "described lands to the original grantees thereof, their "heirs and legal assigns, to-wit:—"

(Here follows a confirmation of a large number of grants, in the Counties of Webb, Starr, Cameron, Nueces and Kinney, aggregating many millions of acres of land. The confirmation of the grant in question is No. 103, Starr County, as follows:

"Pedro de la Garza, six and a half leagues, called " 'Santa Rosa,' and Alexandro Farias, four and a half "leagues, called 'San Jose.' "

"Art. 4462. (2) It shall be the duty of those "claiming any of the lands named in this act, to have "the same surveyed by the district or county surveyor "of the county in which the same may be situated, and "upon the return of the field notes thereof to the gen- "eral land office, the commissioner is hereby authorized "and required to have the same plotted on the maps "of his office, and issue patents for the same in accord- "ance with existing laws; Provided, that no patent shall "issue for a less amount than the original grant. That "the owners of said lands shall be required to pay the "taxes due on the same from the date of the organiza- "tion of the respective counties herein mentioned; "which taxes shall be paid, and legal vouchers for the "same exhibited to the commissioner of the general "land office, before the patent to the same shall issue.

"Art. 4463. (3) In all cases where the original "title papers of lands claimed by this act (or which "were exhibited to the commissioners to investigate "land titles west of the Nueces), were lost by the wreck "of the steamer Anson, the commissioner of the general

"land office, and the supreme and district courts of this "state, are hereby authorized to recognize as of equal "validity, all authenticated copies that the parties may "have been able to obtain.

"Art. 4464. (4) The report of the land commis- "sioners to investigate land titles in certain counties "therein named under the act approved February 8th, "1850, shall be deposited with the commissioner of the "general land office.

"Art. 4465. (5) The confirmation herein extended "to the lands mentioned in this act, shall in no way be "construed to interfere with any rights which may have "accrued to other parties before the passage of this Act, "but the same shall remain without prejudice: Pro- "vided, that nothing in this act shall be so construed as "to relinquish the rights of the state to any of the "islands or salt lakes situated in the territory em- "braced in this act."

(1st Paschal's Digest, pages 734-737).

ACT OF SEPTEMBER 3, 1901.

"SPANISH AND MEXICAN LAND GRANTS--ACT "TO PROVIDE FOR TESTING VALIDITY OF.

"(H. B. No. 19)

CHAPTER IV.

"An Act to provide for ascertaining and adjudicat- "ing certain claims against or in favor of the State for "lands, titles to which are claimed to have emanated "from the Spanish or Mexican government; to adjust "and settle the rights of the State and the owners or "claimants respectively of such lands, and if found "valid, to confirm as against the State, the right and "title of such claimants or owners, and to provide for "the patenting of the same when title thereto has been "confirmed by suit or otherwise; and for the recovery "thereof by the State when the claimant has no title "thereto."

"Section 1. BE IT ENACTED BY THE LEGIS- "LATURE OF THE STATE OF TEXAS: That any "person or persons who may be the original grantee, "heir, legal assign, or in any manner the owner or claim- "ant of any grant, tract or survey of land, or part "thereof, situated between the Nueces and Rio Grande "rivers and below a line drawn from the northern "boundary of Webb county to the mouth of Moros

"creek, where the same empties into the Nueces river,
"and emanating or claimed to have emanated from the
"Spanish or Mexican governments, and having its
"origin at such time as to be, and being within the pro-
"tection guaranteed by the treaty of Guadalupe Hidalgo
"entered into between the United States and Mexico,
"and proclaimed on the 4th day of July, A. D. 1848,
"may file a petition in the district court of Travis
"County, Texas, against the State of Texas as defend-
"ant for the confirmation of the title thereto, and also
"for the adjudication of his, her or their title, right, in-
"terest or claim therein and thereto, as against the
"State; which petition shall be filed with the district
"clerk of the county in which suit is brought, at least
"twenty days before the time of holding the next suc-
"ceeding term of the district court in and for such
"county, and shall contain a full description of the
"grant, tract or survey of land claimed, setting forth
"particularly its situation, boundaries and extent, and
"the ownership, right, interest or claim of the plaintiff
"or plaintiffs, and each of them, in and to said land, and
"the source from which said ownership, right, interest
"or claim emanates, and shall accompany and file with
"such petition the titles or evidences of titles, or right
"or true copies thereof, and if in a foreign language,
"in addition true translations thereof, under which the
"same is held or claimed, or if such ownership, right,
"interest or claim of plaintiff does not have its origin
"in or is not based upon such written evidences of
"title, right, interest or claim, then a statement in writ-
"ing, setting forth substantially the facts upon which
"such said ownership, right, interest or claim is based
"and of which it consists; and the district court shall
"thereafter at a regular term thereof investigate the
"same, and try said cause in accordance with the laws
"of nations, the laws, usages and customs of the govern-
"ment from which such said ownership, right, interest
"or claim emanates or is derived, and the Constitution,
"laws and treaties of the United States of America, and
"of this, the State of Texas, and the principles of
"equity, so far as the same are applicable, and if in ac-
"cordance therewith, the plaintiff (or plaintiffs as the
"case may be) shall by a preponderance of the testi-
"mony show that he is entitled thereto, shall give judg-
"ment in favor of such plaintiff or plaintiffs, against
"the State in favor of and for the confirmation of the
"title to said land, describing the same by metes and
"bounds, or in favor of the State against such claimant
"or claimants, as the facts may warrant.

"Sec. 2. That the original petition against the State, "in any such suit as is provided for in Section 1, of this "act, shall, at the time of filing, have annexed thereto, "or be accompanied by an affidavit of one or more of "the plaintiffs in said cause, made before some compe- "tent officer, stating that the title, or evidences of title "or right, or the claim so submitted for investigation, "is not forged or antedated, but that the same is, of "the knowledge, or according to the information and "belief of the affiant, genuine, and that he, or they, "are the true and lawful owner or owners, or part "owner or owners, thereof, and that all the facts set "forth in said petition are true, to the best of the affi- "ant's knowledge and belief.

"Sec. 3. That upon the filing of any such petition, it "shall be the duty of the clerk of the district court of "the county in which any suit against the State as in "this act provided for is brought, to issue citations to "be served upon the Attorney General of this State. All "such citations and their service, and the return "thereon to conform to and be governed by the laws "now in force in this State in other civil causes, and "said citation shall be accompanied by a certified copy "of the plaintiff's petition, and also by certified copies "of all such titles or evidences of title or right, or copies "thereof and their translations, if any, or statement "of facts upon which such claim is based, as shall have "been filed with such said petition.

"Sec. 4. It is hereby made the duty of the Attorney "General to represent the State in all suits which may "be brought under this act.

"Sec. 5. Upon the trial of any cause brought by any "person or persons under this act against the State of "Texas any claim of title or right to land, or copy "thereof, which has been spread upon the records of "the county or land district where the land was situ- "ated at the time of such record for thirty years, ac- "companied by proof of claim in good faith under such "title or right during such time, shall be admissible in "evidence as if duly recorded as is provided by and sub- "ject to the conditions prescribed in Article 2312, of the "Revised Statutes of Texas.

"Sec. 6. That for all claims finally confirmed under the "provisions of this act a patent shall issue in the name "of the original grantee, his heirs and legal assigns "upon presentation at the General Land Office of an "authenticated certificate of such confirmation and the "field notes of the County surveyor of the county within "which the land may be situated, accompanied with the

"legal vouchers showing that the taxes due on said "land have been paid to the State and county, in ac- "cordance with Section 13, Chapter 103, of the acts "of the Twenty-fifth Legislature.

"Sec. 7. That all persons owning grants for lands "which emanated from the government of Spain or "that of Mexico, which grants have been recognized "and validated by the State by acts of the Legislature "approved February 10, 1852, or which have been con- "firmed by a decree of court under the acts approved "February 11, 1860, of August 15, 1870, or other acts, "and who have returned their field notes to the General "Land Office, as required by law, shall be entitled to a "patent for said lands. And in case the Commissioner "of the General Land Office has refused or shall here- "after refuse to issue a patent for said land, then the "owner of the same may institute suit against the "State, in the district court of Travis County, for the "purpose of determining by decree of court the metes "and bounds of the land covered by his grant. The "said cause shall be governed by the rules prescribed "in this act, except that the owner shall not be re- "quired to establish his right to the land further than "to show that the title to the same has been validated "or confirmed under some one of the acts mentioned in "this section.

"Sec. 8. That upon presentation at the Land Office "of an authenticated copy of the judgment establishing "the boundaries of said land together with proper evi- "dence of the right of the claimant thereto, patent shall "be issued to the claimant for the land embraced within "the metes and bounds described in the judgment.

"Sec. 9. That claimants under this act shall give "bond for costs, as required in other cases; and shall "pay all costs incurred in the district court, and all "other costs that may be incurred in the case; provided, "that nothing in this act shall be so construed as to hold "the State of Texas liable for any expense that may "accrue in locating or surveying any of the lands men- "tioned in this act, except such as the State may seek "to recover to itself.

"Sec. 10. All claimants of titles to be ascertained "and adjudicated under the provisions of this Act shall "have two years from and after the passage of this "act within which to bring suit; and all such claimants "shall have six months after the rendition of a final "judgment in their favor within which to file in the "General Land Office a copy of said judgment and the "field notes, as provided in Section 6 of this act. And

"failing to institute such suit within the time pre-
"scribed such claimants shall be forever barred of any
"rights conferred upon them by this act. Upon failure
"to file in the General Land Office the authenticated
"copy of the judgment and the field notes of the land,
"within the time provided for in this act, the claimant
"shall forfeit all right he may have acquired by virtue
"of said judgment.

"Sec. 11. The Attorney General of this State is
"hereby directed and required to institute and prose-
"cute, in the name of the State of Texas, such suits
"as may be necessary to recover from the person or
"persons in possession thereof or claiming title thereto,
"all lands which are held or claimed under titles ema-
"nating from the Spanish or Mexican governments
"where no valid evidence of such grants are to be found
"in the records or among the files of the General Land
"Office; and also such suits as may be necessary to de-
"termine the exact location and boundaries of such
"lands, where the evidence on file in the General Land
"Office does not sufficiently identify the land claimed;
"and such suits shall be brought, prosecuted and tried
"in the district court of Travis County, Texas.

"Sec. 12. The fact that there is now no law under
"which claimants of land under Spanish or Mexican
"grants can have their rights adjudicated and determ-
"ined, and the importance of having the validity of
"such grants speedily ascertained, creates an emer-
"gency and an imperative public necessity, that the rule
"requiring bills to be read on three several days be sus-
"pended, and the same is so suspended, and that this
"act be in force from and after its passage, and it is
"so enacted.

"(Note: The enrolled bill shows that the foregoing
"act passed the House of Representatives, yeas 69, nays
"22; and passed the Senate, no vote given).

"Approved September 3, 1901.

"Takes effect 90 days after adjournment."

(Laws of Texas, Vol. 11, Acts of 27th Legislature, 1st Called Session, pages 4-7).

CHARTS

TOO

LARGE

FOR

FILMING

Office Supreme Court, U. S.
FILED.
DEC 16 1907
JAMES H. McKENNEY,

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 91.

D. SULLIVAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

BRIEF FOR DEFENDANT IN ERROR.

ROBERT VANCE DAVIDSON,
Attorney General of Texas.

WILLIAM R. HAWKINS,
Assistant Attorney General of Texas,
For the State of Texas, Defendant in Error.

VON BOECKMANN-JONES COMPANY, PRINTERS, AUSTIN, TEXAS.

254-127/-75

Supreme Court of the United States,

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IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The statement of the case set out in brief of the plaintiff in error is substantially correct, as far as it goes, except that the grant to Pedro de la Garza, which is the subject of this controversy, was for only six and one-half leagues, as stated on page 3 of said brief in the quotation from the opinion of the Court of Civil Appeals, the word "sixty" appearing in the brief by clerical or typographical error, instead of "six." (Tr., p. 160.)

However, we believe the following supplemental statement will assist the court in getting a comprehensive view of the case:

This action was brought by the Attorney General of Texas, in the name of the State of Texas, in the district court of Travis county, Texas, under Chapter 4, Acts of the First Called Session of the Twenty-seventh Legislature of Texas, (1901), page 6, which is as follows:

"SPANISH AND MEXICAN LAND GRANTS—ACT TO PROVIDE FOR TESTING VALIDITY OF.

"H. B. No. 19. CHAPTER IV.

"An Act to provide for ascertaining and adjudicating certain claims against or in favor of the State for lands, titles to which are claimed to have emanated from the Spanish or Mexican government; to ad-

just and settle the rights of the State and the owners or claimants respectively of such lands, and, if found valid, to confirm as against the State, the right and title of such claimants or owners, and to provide for the patenting of the same when title thereto has been confirmed by suit or otherwise; and for the recovery thereof by the State when the claimant has no title thereto.

"SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That any person or persons who may be the original grantee, heir, legal assign, or in any manner the owner or claimant of any grant, tract or survey of land, or part thereof, situated between the Nueces and Rio Grande rivers and below a line drawn from the northern boundary of Webb county to the mouth of Moros creek, where the same empties into the Nueces river, and emanating or claimed to have emanated from the Spanish or Mexican governments, and having its origin at such time as to be, and being within the protection guaranteed by the treaty of Guadalupe Hidalgo entered into between the United States and Mexico, and proclaimed on the 4th day of July, A. D. 1848, may file a petition in the district court of Travis county, Texas, against the State of Texas as defendant for the confirmation of the title thereto, and also for the adjudication of his, her or their title, right, interest or claim therein and thereto, as against the State; which petition shall be filed with the district clerk of the county in which suit is brought, at least twenty days before the time of holding the next succeeding term of the district court in and for such county, and shall contain a full description of the grant, tract or survey of land claimed, setting forth particularly its situation, boundaries and extent, and the ownership, right, interest or claim of the plaintiff or plaintiffs, and each of them in and to said land, and the source from which such said ownership, right, interest or claim emanates, and shall accompany and file with such petition the titles or evidences of titles, or right or true copies thereof, and if in a foreign language, in addition true translations thereof, under which the same is held or claimed, or if such ownership, right, interest or claim of plaintiff does not have its origin in or is not based upon such written evidences of title, right, interest or claim, then a statement in writing, setting forth substantially the facts upon which such said ownership, right, interest or claim is based and of which it consists; and the district court shall thereafter at a regular term thereof investigate the same, and try said cause in accordance with the laws of nations, the laws, usages and customs of the government from which such said ownership, right, interest or claim emanates or is derived, and the Constitution, laws and treaties of the United States of America, and of this, the State of Texas, and the principles of equity, so far as the same are applicable, and if in accordance therewith, the plaintiff (or plaintiffs, as the case may be) shall by a preponderance of the testimony show that he is entitled thereto, shall give judgment in favor of such plaintiff or plaintiffs, against the State in favor of and for the confirmation of the title to said land, describing the same by metes and bounds, or in favor of the State against such claimaint or claimants, as the facts may warrant.

"SEC. 2. That the original petition against the State, in any such suit as is provided for in Section 1 of this act, shall, at the time of fil-

ing, have annexed thereto, or be accompanied by an affidavit of one or more of the plaintiffs in said cause, made before some competent officer, stating that the title, or evidences of title or right, or the claim so submitted for investigation, is not forged or antedated, but that the same is, of the knowledge, or according to the information and belief of the affiant, genuine, and that he, or they, are the true and lawful owner or owners, or part owner or owners, thereof, and that all the facts set forth in said petition are true, to the best of the affiant's knowledge and belief.

"SEC. 3. That, upon the filing of any such petition, it shall be the duty of the clerk of the district court of the county in which any such suit against the State, as is in this act provided for is brought, to issue citations to be served upon the Attorney General of this State. All such citations and their service, and the return thereon to conform to and be governed by the laws now in force in this State in other civil causes, and said citation shall be accompanied by a certified copy of the plaintiff's petition, and also by certified copies of all such said titles or evidences of title or right, or copies thereof and their translations, if any, or statement of facts upon which such claim is based, as shall have been filed with such said petition.

"SEC. 4. It is hereby made the duty of the Attorney General to represent the State in all suits which may be brought under this act.

"SEC. 5. Upon the trial of any cause brought by any person or persons under this act against the State of Texas any claim of title or right to land, or copy thereof, which has been spread upon the records of the county or land district where the land was situated at the time of such record for thirty years, accompanied by proof of claim in good faith under such title or right during such time, shall be admissible in evidence as if duly recorded as is provided by and subject to the conditions prescribed in Article 2312 of the Revised Statutes of Texas.

"SEC. 6. That for all claims finally confirmed under the provisions of this act a patent shall issue in the name of the original grantee, his heirs and legal assigns upon presentation at the General Land Office of an authenticated certificate of such confirmation, and the field notes of the county surveyor of the county within which the land may be situated, accompanied with the legal vouchers showing that the taxes due on said land have been paid to the State and county, in accordance with Section 13, Chapter 103, of the Acts of the Twenty-fifth Legislature.

"SEC. 7. That all persons owning grants for lands which emanated from the government of Spain or that of Mexico, which grants have been recognized and validated by the State by acts of the Legislature, approved February 10, 1852, or which have been confirmed by a decree of court under the acts approved February 11, 1860, of August 15, 1870, or other acts, and who have returned their field notes to the General Land Office, as required by law, shall be entitled to a patent for said lands. And, in case the Commissioner of the General Land Office has refused or shall hereafter refuse to issue a patent for said land, then the owner of the same may institute suit against the State, in the district court of Travis county, for the purpose of determining by decree of court the metes and bounds of the land covered by his grant. The said cause shall be governed by the rules prescribed in this act, except that the owner shall not be required to establish his right to the land further

than to show that the title to the same has been validated or confirmed under some one of the acts mentioned in this section.

"SEC. 8. That upon presentation at the Land Office of an authenticated copy of the judgment establishing the boundaries of said land, together with proper evidence of the right of the claimant thereto, patent shall be issued to the claimant for the land embraced within the metes and bounds described in the judgment.

"SEC. 9. That claimants under this act shall give bond for costs, as required in other cases; and shall pay all costs incurred in the district court, and all other costs that may be incurred in the case; provided, that nothing in this act shall be so construed as to hold the State of Texas liable for any expense that may accrue in locating or surveying any of the lands mentioned in this act, except such as the State may seek to recover to itself.

"SEC. 10. All claimants of titles to be ascertained and adjudicated under the provisions of this act shall have two years from and after the passage of this act within which to bring suit; and all such claimants shall have six months after the rendition of a final judgment in their favor within which to file in the General Land Office a copy of said judgment and the field notes, as provided in Section 6 of this act. And failing to institute such suit within the time prescribed such claimants shall be forever barred of any rights conferred upon them by this act. Upon failure to file in the General Land Office the authenticated copy of the judgment and the field notes of the land, within the time provided for in this act, the claimant shall forfeit all right he may have acquired by virtue of such judgment.

"SEC. 11. The Attorney General of this State is hereby directed and required to institute and prosecute, in the name of the State of Texas, such suits as may be necessary to recover from the person or persons in possession thereof or claiming title thereto all lands which are held or claimed under titles emanating from the Spanish or Mexican governments where no valid evidence of such grants are to be found in the records or among the files of the General Land Office; and also such suits as may be necessary to determine the exact location and boundaries of such lands, where the evidence on file in the General Land Office does not sufficiently identify the land claimed; and such suits shall be brought, prosecuted and tried in the district court of Travis county, Texas.

"SEC. 12. The fact that there is now no law under which claimants of land under Spanish or Mexican grants can have their rights adjudicated and determined, and the importance of having the validity of such grants speedily ascertained, creates an emergency and an imperative public necessity that the rule requiring bills to be read on three several days be suspended, and the same is so suspended, and that this act be in force from and after its passage, and it is so enacted."

The action so brought was to determine the exact location and boundaries of said grant of six and one-half leagues (or 28,782 acres) of land lying in Hidalgo county, Texas, and known as "Santa Rosa de Arriba," which was made by the Mexican government to Pedro de la Garza, and which was confirmed by the Legislature of the State of Texas by Act of

February 10, 1852, and to recover to the public free school fund of the State of Texas the quantity of land claimed by plaintiff in error, and those under whom he holds, in excess of that embraced within the exact boundaries of the original grant.

The petition sets out, by definite field notes, the boundaries of a body of 55,500 acres of land in Hidalgo county, and alleges adverse possession thereof, and that its rental value is 5 cents per acre per annum, and also embodies the following averments:

"That as plaintiff is informed and believes and here charges, the defendant claims title to said land, and to be entitled to the possession thereof, by virtue of a grant from either the Spanish or Mexican government, made for six and one-half leagues of land to Pedro de la Garza, and plaintiff here admits that there was such a grant in favor of the party named for the amount of six and one-half leagues; that said grant was confirmed to the said original grantee thereof and to his heirs and legal assigns by the State of Texas by virtue of an act of the Legislature of the State of Texas of the 10th day of February, A. D. 1852, for the full amount of six and one-half leagues and no more.

"That by the law of February 10, 1852, above referred to, said Pedro de la Garza or his heirs or legal assigns, as the case may have been, was required to have the said six and one-half leagues of land surveyed by the district or county surveyor of Starr county, in which said land at that time was situated, and upon return of the proper field notes thereof to the General Land Office, the Commissioner was authorized to have the same plotted on the maps of his office and to issue patents for the same in accordance with the existing laws, upon payment by the owner of said land of all the taxes due on the same from the date of the organization of the said county.

"Plaintiff further alleges that neither the grantee of said six and one-half leagues of land nor his heirs or assigns have had the land properly surveyed and proper field notes returned to the General Land Office which sufficiently identifies the land claimed by virtue of said grant to enable it to be determined what land is claimed by virtue of same.

"Plaintiff further alleges that the defendant, claiming under and by virtue of said grant and the confirmation thereof, has taken possession of a great deal more land, which really belongs to the State of Texas, than the said six and one-half leagues, but that neither the said defendant nor anyone else has ever segregated from the public domain the amount of land which can be legally held by virtue of the aforesaid grant."

The prayer was "for the recovery of the title and possession of all of said land in excess of the six and one-half leagues, with writ of possession for the same, and damages, and for the rental value of the use and occupation of such excess," etc. (Tr., pp. 2 and 3.)

A jury was waived and the cause tried before the district court, the result being a judgment in favor of the State of Texas for three several tracts of land aggregating 13,085 66-100 acres, and for $196 as rental

value thereof since acquisition thereof by D. Sullivan, the plaintiff in error, from D. R. Fant, the original defendant, pending suit. (Tr., pp. 5-9.)

That judgment was duly affirmed by said Court of Civil Appeals (Tr., p. 158), and a motion for rehearing was denied. (Tr., p. 170.) The Supreme Court of Texas dismissed an application for a writ of error. (Tr., p. 210.)

A writ of error bringing the case to this court was subsequently allowed by Chief Justice Fisher of said Court of Civil Appeals. (Tr., p. 214.)

The original grant was by the State of Tamaulipas to Pedro de la Garza in the year 1834. (Tr., p. 29.) The original survey of the land embraced in said grant was made in the same year by Antonio Canales, Surveyor General. (Tr., p. 30.)

The aforesaid act of confirmation, which was passed in 1852, confirmed the title to many Mexican grants lying in the counties of Webb, Starr, Cameron and Nueces, in Texas, between the Nueces and the Rio Grande, including the Santa Rosa de Arriba grant.

In 1859 Felix A. Von Blucher made a resurvey of the original grant. His field notes and plat of said resurvey are set out at pages 32-34 of Transcript. They were filed in the General Land Office of Texas on August 5, 1869. (Tr., p. 34.) Said field notes purport to embrace eight leagues and twelve labors of land. (Tr., p. 33.) The calculation made in said General Land Office and endorsed upon said field notes shows that the resurvey in fact included ten leagues and seventeen labors of land. (Tr., p. 35.) No patent on any of the land embraced in said grant or on said resurvey thereof has ever been issued. (Tr., pp. 1-232.)

The general issue in this cause may be outlined thus:

Upon behalf of the plaintiff in error, Sullivan, it is contended that the Blucher resurvey is a correct survey of the grant from the Mexican government, and correctly establishes its boundaries; and that, if not, the State of Texas is bound by said resurvey by reason of her acceptance thereof and her subsequent acts with regard thereto; that such acts constitute a binding recognition by the State of Texas of the lines of the original grant and survey as established or located by the Blucher resurvey of 1859; and that in any event all these things, taken in connection with said act of confirmation, constitute a valid and subsisting contract between the plaintiff in error and his predecessors in title, and the State of Texas, and the effect of the judgment of the State courts awarding to the State of Texas 13,085 66-100 acres of the land sued for is to impair the obligation of such contract, and that said judgment is, consequently, violative of the provision of Paragraph 1, Section 10, Article 1 of the Constitution of the United States, which declares "no State shall * * * pass any law impairing the obligation of contracts."

Upon behalf of the defendant in error, the State of Texas, it is contended that the original Santa Rosa de Arriba grant as surveyed by the Mexican Surveyor General Canales did not embrace any of the land for which the State of Texas recovered judgment in the State courts; that authority to have a resurvey made for the purpose of ascertaining the original boundaries of the grant did not authorize the making of new boundary lines, the purpose of the Legislature in said act of confirmation being merely to confirm the grant according to its original boundaries, not including any additional lands; that in making his resurvey Blucher acted for the claimants and not as agent for the State of Texas, and the State is not bound by his acts; that the Commissioner of the General Land Office did not accept Blucher's field notes as correct, but marked them erroneous, and practically repudiated his work, and has never issued a patent upon the lands in controversy; in short, that the State of Texas has never recognized any claim to, or entered into any contract concerning any of the lands sued for, save and except the six and one-half leagues embraced within the boundaries of the original grant, and that, consequently, said judgment is not in contravention of any of said constitutional provisions.

The printed brief for plaintiff in error treats his First and Second Assignments of Error together, so we will treat them together.

FIRST COUNTER-PROPOSITION.

The confirmation shown by the Act of February 10, 1852, applied to the land embraced in the original grant to Pedro de la Garza, and not to the land awarded to the State of Texas by the judgment in this cause.

STATEMENT.

The grant of "Santa Rosa de Arriba" was made to Pedro de la Garza by the State of Tamaulipas in 1834, and was for 20,782,500 square varas of land. (Tr., p. 30.) The land was surveyed by Antonio Canales, Surveyor General. (Tr., p. 30.)

The Legislature of Texas confirmed said grant by the Act of February 10, 1852, Chapter 71, Acts of the Fourth Legislature of Texas. (3 Gammel's Laws of Texas, p. 941, bottom.)

The portions of said act of confirmation which are material to this case are as follows:

"SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That the State of Texas hereby relinquishes all her right and interest

in the following described lands to the original grantees thereof, their heirs and legal assigns, towit:

"* * * County of Starr * * * (103) Pedro de la Garza, six and one-half leagues, called 'Santa Rosa,' and Alexandro Farias four and a half leagues, called 'San Jose' * * *."

"SEC. 2. That it shall be the duty of those claiming any of the lands named in this act to have the same surveyed by the district or county surveyor of the county in which the same may be situated, and upon the return of the field notes thereof to the General Land Office, the Commissioner is hereby authorized and required to have the same plotted on the maps of his office, and issue patents for the same in accordance with existing laws; provided, that no patent shall issue for a less amount than the original grant. That the owners of said lands shall be required to pay the taxes due on the same, from the date of the organization of the respective counties herein mentioned; which taxes shall be paid, and legal vouchers for the same exhibited to the Commissioner of the General Land Office before the patent to the same shall issue.

"SEC. 3. That in all cases where the original title papers of lands claimed by this act (or which were exhibited to the Commissioners to investigate land titles west of the Nueces), were lost by the steamer Anson, the Commissioner of the General Land Office and the Supreme and district courts of this State are hereby authorized to recognize as of equal validity all authenticated copies that the parties may have been able to obtain.

"SEC. 4. That the report of the land commissioners to investigate land titles in certain counties therein named, under the act approved February 8, 1850, shall be deposited with the Commissioner of the General Land Office.

"SEC. 5. That the confirmation herein extended to the lands mentioned in this act shall in no way be construed to interfere with any rights which may have accrued to other parties before the passage of this act, but the same shall remain without prejudice; provided, that nothing in this act shall be so construed as to relinquish the rights of the State to any of the islands or salt lakes situated in the territory embraced in this act."

None of the three tracts awarded by the judgment in this case to the State of Texas was within the lines of the original grant as surveyed by Canales.

AUTHORITIES.

Ryan vs. Carter, 93 U. S., 82.
Langdeau vs. Hanes, 21 Wall., 529.
Clark vs. Hills, 67 Texas, 145.
Corrigan vs. State of Texas, 94 S. W. Rep., 95.
Love vs. Barber, 17 Texas, 320.
Welder vs. Carroll, 29 Texas, 333.

ARGUMENT.

When this statute of confirmation was passed there existed no reason, political or moral, legal or equitable, and there was moving to the State of Texas no conceivable consideration, for granting, giving or confirming to the owners of the "Santa Rosa de Arriba" Mexican grant a single square vara of land in addition to what was originally embraced in said grant. There was, on the contrary, every inducement to impel the Legislature of Texas, in so far as it could do so in good conscience and with due regard to good faith and existing treaty obligations, to reserve for actual settlement by colonists who were pouring into the country, and for other purposes, all lands which were not embraced within the boundaries of such Mexican grant.

The language of the Act of Confirmation of 1852 is not apt in which to embody a grant *de novo*, as of lands not theretofore granted, but is apt in which to confirm an existing title to land which had already been granted by a former government.

In Section 1 of the act it is declared "that the State of Texas hereby relinquishes all her right and interest in the following described lands to the *original grantees* thereof, their heirs and legal assigns," etc. The use of the words "original grantees" shows clearly that the sole purpose of the Legislature was to ascertain and determine and to make a record of the exact boundaries of the several grants therein mentioned which had been made by the Mexican government under a system which left the boundaries of many surveys not definitely determined or marked on the ground or delineated on public maps.

Section 2 of said act made it the duty of the claimants to have a resurvey of their respective *existing grants*, and made it the duty of the Commissioner of the General Land Office to plat same—not other lands —on the maps of his office.

The provisions of Section 3 of the act concerning "original title papers of lands claimed by this act," also shows the purpose of the Legislature to limit confirmations to the boundaries of pre-existing grants, a purpose which is to be rendered effective by the provisions of Section 4 requiring that the report of the land commissioners who were appointed under said Act of February 8, 1850, to be deposited in the General Land Office of Texas.

This purpose is made manifest in Section 5 of the Act of Confirmation by the use of the words, "That the confirmation herein extended to the lands mentioned in this act," etc.

The use of the word "confirmation" is inconsistent with the idea that the Legislature intended that any of the various grants therein confirmed should ever embrace, by reason of a resurvey thereof, more land

than was originally embraced within the boundaries of such grant as surveyed upon the ground by the Mexican Surveyor General.

It is utterly unreasonable to suppose that by the provisions in the Act of 1852 it was intended that the county surveyor should survey any tract of land he pleased, and return the field notes to the General Land Office, and that the Commissioner should be bound to issue a patent on such survey. Such surveyor was authorized to survey the grants that were confirmed. His authority extended no further, and to the extent that he went beyond this authority the surveys were, *ex proprio vigore,* of no binding force. Ryan vs. Carter, 103 U. S., 82; Clark vs. Hills, 67 Texas, 145; Corrigan vs. State, 94 S. W. Rep., 95.

If in surveying Santa Rosa, for instance, he had made the south and north lines short 6900 varas, or any other distance, instead of excessive to that extent, with a corresponding decrease in the quantity of the land in the grant, would it be contended that the owners of the grant would have been compelled, *in invitum,* to accept a patent for the land embraced in such survey in satisfaction of their claim under the confirmed grant, even were there no provision in the act of confirmation that the patent should not be for less than the quantity confirmed?

If such survey had been made and the owner had accepted a patent upon the resurvey, a different question would be presented, just as if the State had actually issued a patent on the Blucher field notes of the Santa Rosa de Arriba, a different question would be presented. Corrigan vs. State, *supra.*

The survey by Blucher of lands not embraced in the original grant and survey thereof by Canales constituted no appropriation of such additional lands out of the public domain and hence did not, by itself, or in connection with said act of confirmation, constitute or form any contract whatever between the owners of the original grant and the State of Texas.

In passing, it may be remarked that what is said here concerning an excess in a resurvey of a confirmed grant applies as well to the Tule and the Encinal grants, which are shown in the record.

In making these resurveys of the Santa Rosa, Encinal and Tule, little or no regard was paid to the original surveys, but inasmuch as the Tule and Encinal, as resurveyed, each contained substantially the quantity of land called for in the original grant, patents were issued, based on such resurveys.

In the case of Santa Rosa, however, the case is different, the excess in the resurvey being very great, and no patent thereof having issued, and in this case plaintiff in error's case rests solely upon this resurvey of Blucher, which must be presumed to have been repudiated by the State of Texas, just as the owner of the grant would have had the right to re-

pudiate it if it had contained less than the quantity of the original grant. Corrigan vs. State, 94 S. W. Rep., 95.

SECOND COUNTER-PROPOSITION.

The Blucher resurvey was not made in compliance with the provisions of the Act of Confirmation of February 10, 1852.

STATEMENT.

For the terms of said act, see statement under first counter-proposition.

The Blucher resurvey was not made until 1859, about seven years after the Act of Confirmation became a law. (Tr., pp. 32-34.)

Field notes and plat of said resurvey were not filed in the General Land Office of Texas until August 5, 1869, which was more than ten years after the resurvey was made, and more than seventeen years after said act of confirmation took effect. (Tr., p. 34.)

Said field notes are, upon their face, and in the body thereof, entitled:

"Field notes of a survey of eight leagues and twelve labors of land made for Wm. G. Hale and F. J. Parker, the assignees of Pedro de la Garza, this being the quantity of land to which they are entitled by virtue of a grant from the State of Tamaulipas, dated on the 3d day of July, A. D. 1834." (Tr., p. 33.)

Said field notes and plat were never approved by the Commissioner of the General Land Office of Texas, as required by general laws of Texas. On the contrary, they were promptly examined and disapproved by that officer, who caused the following endorsement to be made thereon:

"Closes partly all but the approximate area found with apportioning errors is 267,552,959 sq. vrs.—10 leagues 17½ labores, or 55,252,959 sq. vrs. too much. Aug. 21, '69. Richardson. $2.00."

The above calculation of area, made in the General Land Office, places the area of the resurvey at 10 leagues and 17½ labors, instead of 6½ leagues.

The amount of land actually embraced in the survey as made by Blucher is, according to the lowest estimate made by Maddox (appellant's surveyor), 45,191.07 acres, making an excess of 14,962.57 acres over the quantity called for in the grant.

According to another estimate made by Maddox, based on a different reconstruction of Blucher's survey, the quantity contained in the survey is 49,559.85 acres, or an excess of 19,131.35 acres, or of about 60 per cent of the quantity called for.

According to the calls for this survey, the width of the grant from

east to west is 16,900 varas, while Canales' survey calls for a width of 10,000 varas.

Blucher's survey of the Santa Rosa de Arriba, which plaintiff in error claims to establish the lines of the grant, extends the north and south lines from 10,000 varas to 16,900 varas, *an excess in distance of nearly four miles.* No objects, natural or artificial, were called for to account for, explain, or justify this extension of the north and south lines beyond the calls for distance; so far as the evidence shows, it was purely arbitrary. (Tr., pp. 29-34.)

AUTHORITIES.

Same as under First Counter-Proposition.

ARGUMENT.

If, in fact, the land adjudged to the State of Texas lies within the boundaries of the Santa Rosa de Arriba, as originally surveyed by Canales, the State is not entitled to recover, and judgment should have been for the plaintiff in error for that reason alone. But the district court before whom this cause was tried, without a jury, rendered judgment in favor of the State of Texas for three portions of the land sued for. The record discloses no findings of fact nor conclusions of law. It was admitted that the Santa Rosa de Arriba was a valid grant. (Tr., p. 2.) So the judgment necessarily involved the finding by the court that the three tracts of land awarded to the State of Texas were not included in the boundaries of said grant. Said judgment has been affirmed by the State courts of last resort. (Tr., pp. 158, 170, 210.)

As a matter of course, that finding of fact will not be reviewed by this court.

Authority to have the original grant resurveyed, or to resurvey same, did not authorize the making of entirely new lines.

Love vs. Barber, 17 Texas, 320.

Welder vs. Carroll, 29 Texas, 333.

Assuming, however, that the land is not embraced in said original survey of 1834, but is included in the Blucher resurvey of 1859, plaintiff in error contends, in effect, that said resurvey and the location by it of the lines of the Santa Rosa grant have been so far accepted and recognized by the State that it is now estopped to deny the correctness of that resurvey, and of the boundaries of the Santa Rosa as thereby located, and that such acceptance and recognition are elements entering into a contract between himself and the State of Texas, for the three tracts which the judgment awarded to the State.

These facts of acceptance and recognition claimed and relied upon by plaintiff in error are:

First—That Blucher, as county surveyor, represented the State for the purpose of agreeing with the owners of the land in locating the boundaries of the grant, and that his resurvey is the solemn act of the State.

To this we reply: In no sense was Blucher the agent or representative of the State, with authority to bind the State in the location of this survey. Cameron county was a separate land district. (Act of February 16, 1852, page 134.) The surveyor was elected just as any other officer, by the voters of the county. (Sec. 10, Act of May 12, 1846, page 232.) It was never contemplated by the provisions of Section 2 of the Act of 1852, making it the duty of persons whose grants were confirmed by the act, to have the grants surveyed by the district or county surveyor, to vest that officer with any power or authority as a representative of the State, to bind the State by the resurvey made by him. If it had been intended to vest him with such extraordinary powers—hardly possessed by the Governor, certainly not by the Commissioner of the General Land Office—such intention would have been expressed, and can not be inferred from the terms of the act.

Neither the survey nor the patent were essential for the protection of the owner *to the extent of the confirmed grant.* By the act of confirmation his title was established, as against the State, to the six and a half leagues constituting the original grant. This confirmation was not limited or impaired by the provisions of the second section of the act in reference to the survey of the land. (Clark vs. Hills et al., 67 Texas, 145-6.) That was a case of a confirmation by the Act of February 11, 1858 (4 Gammel's Laws of Texas. page 1027, bottom), of the Ponce de Leon grant, and the provisions of Section 2 required the land to be surveyed and the field notes to be returned to the General Land Office and patent to issue.

It is further said in the opinion in that case (page 146): "But if this (the survey) had been a matter of vital importance, the Legislature would doubtless have required the survey and return of field notes to be made within a limited time, or would have declared the land forfeited unless the survey was made."

If this survey had been accepted by the owner and the State, and patent issued by the State upon the field notes, unquestionably it would have been binding upon the grantee, and upon the State, as to the boundaries of the grant.

Here, however, we have but a naked survey, embracing, it is true, the land granted and confirmed; but embracing, also, an excess nearly equal

to two-thirds of the quantity of the original grant, and which appears to have been repudiated by the officers of the State, and upon which no patent has ever issued.

The only special authority, if any, given by the act of confirmation, was in the following language: "That it shall be the duty of those claiming any of the lands named in this act to have the same surveyed by the district or county surveyor of the county in which the same may be situated." It will be noted that no authority, general or special, was conferred on the surveyor. The owner was required simply to have the surveyor make an ordinary survey of the grant *as it was confirmed*, and furnish the Land Commissioner with field notes by which a patent should issue. Certainly this did not confer special authority upon this county officer to fix and settle the boundaries of these grants, so as to give his mere survey the force and effect of a binding agreement or contract on the part of the State.

Second—That the act of the Commissioner of the General Land Office of Texas, in delienating upon the map the survey as made by Blucher, is binding upon the State and fixes, irrevocably, in the form of a contract, the boundaries of the grant as thus delineated.

To this we reply: This was intended to be a delineation of the Santa Rosa de Arriba grant as confirmed by the Act of 1852. The Legislature had knowledge of the grant, as a grant of six and a half leagues, according to an actual survey on the ground, for the survey is a part of the grant; and it was intended that the survey required to be made should be, really and in fact, a survey of this grant, so as to make more certain and definite the lines and boundaries already surveyed; and it was the survey of this grant which the Commissioner was required to delineate on the maps of the General Land Office. The grant as thus delineated seems to extend from the Santa Rosa de Abajo on the east, to the Tule, as patented, on the west, and seems to be a reproduction of Blucher's map of his resurvey; but we submit that this is altogether too indefinite to be considered a recognition, even by the Land Commissioner, of the correctness of Blucher's survey. Certainly, as to the location of the east line, there is nothing to indicate that this line is intended to be shown as located differently from Canales' survey. Assuming that these lines, as thus delineated, are different from those of the original grant as made and confirmed, there arises a case of a conflict between the map and the lines of the survey actually made on the ground. In such case, as said by the court in Smith vs. Boone, 84 Texas, 528, "A map, which, by reference to monuments established, or by some other mode, refers to a survey, is presumed to correctly represent the survey as actually made; but, if there is a discrepancy between the map and the survey, the survey must prevail if the position of the points and lines

established by the survey can be proved." This must be taken to be a delineation of the original grant from the evidence furnished by Blucher's map of his resurvey, to have any force whatever. As such, it is contradicted by substantially all of the evidence in the record. This, then, can not be considered as the solemn act, contract or agreement of the State.

Third—That the acts of the various surveyors making other subsequent surveys in calling for the Blucher resurvey lines of the Santa Rosa as the lines of that grant, and the issuing of patents for such adjoining surveys upon such field notes, are each and all solemn acts of the State and constitute contracts with the owners of the Santa Rosa de Arriba grant that the lines of that grant are as called for and located by Blucher.

Plaintiff in error contends, in effect, that the act of Blucher in his resurvey of the Encinal, in which resurvey, as in that of Santa Rosa, no regard whatever was paid to the original survey, nor to the judgment of confirmation which followed the original survey, and of the surveyors who located the railroad surveys to the east and west of Santa Rosa in calling for the lines of this survey, and the recognition of the lines of these surveys, as thus established, constitute a solemn contract between the State and the owners of Santa Rosa, that the lines of the grant, as established by Blucher, are and shall be the correct lines of that grant, and this, in spite of the fact that these are not in fact the correct lines of the original survey and grant.

To this we reply: When offered as evidence as to the true locations of the Santa Rosa de Arriba, these subsequent surveys of contiguous tracts are admissible, and entitled to weight upon the *prima facie* presumption that the lines called for are the true lines of the grant; but when it is shown that the lines called for are not the true lines of the grant at all, but lines of a subsequent survey shown to be erroneous, they lose all of their force, even as evidence of the true lines of the grant. It is to be noticed that we are assuming that the lines of the grant are not as shown by Blucher's resurvey. This part of plaintiff in error's case rests upon that assumption for the reason that, if Blucher's resurvey shows where the grant was originally located, the State has no case, and there is no need to invoke the doctrine of estoppel, recognition or acquiescence, as elements of a contract, which is the matter to which such contention goes.

Granting, for the purposes of this argument, that the doctrine of estoppel can be as freely invoked against the State as against a citizen (which is very far from being true), the doctrine, so far as it arises on the facts relied upon by plaintiff in error, is thus stated:

"The doctrine of estoppel does not extend to mere descriptive matter or statements or recitals which are immaterial and not contractual or essential to the purposes of the instrument. Thus the description in a deed of lands excepted from the conveyance as having been conveyed to another, does not estop the grantor, nor one to whom he shall convey the excepted lands, from alleging that no such conveyance as recited had been made.

"A recital works an estoppel only in an action founded on the deed or brought to enforce rights arising under it. While in a collateral action it may constitute evidence against the one party or the other, it is not conclusive."

The patents to the Encinal and the Tule and to the railroad surveys are contracts with the grantees, and the State would be, in the absence of fraud or mistake, estopped to say that they did not go to the lines of the Santa Rosa, where those lines are called for, but this estoppel would arise only in a suit *growing out of these contracts*, and would not be available to other parties strangers to the contracts. (Williams vs. Chandler, 25 Texas, 411-412; Illg vs. Garcia, 92 Texas, 251-258.)

As to estoppel against the State: Saunders vs. Hart, 57 Texas, 10; Martin vs. Garrison, 27 S. W. Rep., 929; Day Co. vs. The State, 68 Texas, 553; Railway vs. The State, 36 S. W. Rep., 115; Cameron vs. The State, 4 Texas, 91, 103-106.

In the opinion of Chief Justice Fisher in the case last cited, there is a review of the authorities so full as to render any further citation of authorities unnecessary. It is true that the judgment of the Court of Civil Appeals was afterwards reversed by the Supreme Court, but upon an entirely different ground. 6 Wait's Actions and Defenses, 681.

A party knowing the truth or having the means of knowledge can not claim the benefit of estoppel. Brant vs. Virginia Coal Co., 93 U. S., 326.

If the question should arise upon the patents or locations, it would always be competent to show where, in fact, the lines were located on the ground by the surveyor. If, perchance, in making these surveys the surveyor had gone inside the true lines of the Santa Rosa, calling, however, for the east line or the west line, and patents had been issued upon such survey, clearly plaintiff in error, as the owner of Santa Rosa, would not be estopped by such recitals as to the location of the boundaries of the Santa Rosa, and as estoppel must be mutual to be binding, he can not now invoke it against the State. There are thousands of cases in the State of Texas where a subsequent survey calls for the lines of an older survey erroneously supposed to be where called for. Whenever it can be shown where, in fact, the lines of the surveys were laid on the ground, if there was land lying between them as actually surveyed, the State's right to treat it as vacant land has never been questioned, and can not

be questioned. The Act of February 23, 1900, settling the account between the State and the school fund expressly appropriated such vacant lands to the school fund, and made special provisions for the sale of such as were not disclosed by the lithographic maps of the county. (Sec. 5, Chap. 11, Acts of First Called Session of the Twenty-sixth Legislature of Texas, page 32.)

According to the contention of plaintiff in error, the State would be estopped by the recitals in the patent of the subsequent survey calling for the line of the older one, and, further, this estoppel could be invoked by the owner of the older survey, the lines of which were erroneously called for as being the true lines of the grant, which is shown, and in fact found by the court, to have been a mistake.

Both the Tule and Encinal patents cover land not embraced in the original surveys. The Tule patent lines extend west 2500 varas from the Purgatoria corner, while the original grant calls for the Purgatoria corner as the northwest corner. The State could not now reform or cancel this patent on account of the mistake, nor can the owner of the Tule grant do so. The Encinal patent also embraces land not embraced in the original grant, as will be seen by comparing Canales' map (Tr., pp. 14-15) with Salina's map (Tr., pp. 18-19), both maps giving the length of the various lines.

Having accepted the patents in satisfaction of their claims under the original grants, the owners are bound thereby.

The State is not seeking to disturb these patent lines in a single instance. If a patent had issued for the Santa Rosa de Arriba under the act of confirmation, the State would not now be seeking to disturb the title under the patent; but their claim of over 49,000 acres of land under a grant and survey for about 30,000 acres seems to have been a little more than the authorities of the State could stand, and, in consequence, the claim seems to have been repudiated and the patent refused.

The only facts upon which estoppel can be predicated in this case as to the boundaries of the Santa Rosa de Arriba are the acts of the ministerial officers of the State in the execution of general laws. Never, except by the act of confirmation of 1852 of the grant of six and a half leagues, called Santa Rosa, to Pedro de la Garza, has the State done anything that had the semblance of a contract with regard to this grant. It made contracts with the owners of the Encinal, the Tule, the Paistle and other grants by the issuance of patents, which it has no intention of seeking, in the slightest degree, to change or invalidate.

A portion of plaintiff in error's brief is devoted to a discussion of acts on the part of the State fixing the boundaries of the Santa Rosa as surveyed by Blucher, and authorities are cited to the general effect that the State lays aside her sovereignty when it makes a contract and comes into

court as a litigant, etc. These are truisms and there is no disposition to dispute them, but they are inapplicable to the facts in the record.

We respectfully submit that the evidence in the record affords no warrant for plaintiff in error's argument that there has ever been any settlement of the boundaries to which the State was in any way a party. Can it be said that the patents to the Tule and Encinal and any of the railroad sections, in which the lines of the Santa Rosa are called for, would constitute an agreement that the boundaries of the Santa Rosa grant are where they are placed by the surveyor in making the surveys upon which the patents are issued? Do they amount to a representation to the world that the lines of the Santa Rosa are thus located? And, if so, has the plaintiff in error or his vendors been induced thereby to deal with the land thus embraced in these boundaries, but not embraced in the boundaries sought to be established in this case? The record is entirely silent on this point, and bare of any evidence which would raise even an equity or moral right in plaintiff in error to have the lines of the Santa Rosa de Arriba extended beyond the lines of the original survey by Canales, upon which the grant for six and one-half leagues was made by Tamaulipas and confirmed by the State.

On the other hand, the records of the General Land Office showed to plaintiff in error and every one else dealing with the Santa Rosa de Arriba the following facts:

First. That the grant was for six and one-half leagues, which had been officially surveyed by the Surveyor General of Tamaulipas, the field notes of whose survey were embraced in or attached to the grant.

Second. That the grant was confirmed to Pedro de la Garza by the Act of 1852 for six and a half leagues.

Third. That in 1859—seven years after the act of confirmation—the grant was resurveyed by F. A. Blucher, district surveyor of Cameron county, for Wm. G. Hale and F. G. Parker, which survey purported on its face to be a survey of eight leagues and twelve labors, "being quantity to which they were entitled by virtue of the grant of Santa Rosa de Arriba under the Act of February 10, 1852."

Fourth. That the field notes of the survey were filed in the General Land Office in 1869—seventeen years after the act of confirmation—when they were found to embrace ten leagues, seventeen and one-half labors.

Fifth. That the grant is found delineated on a map in use in the General Land Office in 1875, the delineation showing the grant substantially as surveyed by Blucher.

Sixth. That no patent ever issued for the grant, and that the endorsements on the field notes made in the Land Office point unmistakably to the fact that patent would not be issued on Blucher's field notes

because of the large excess of land embraced therein. The fact that no patent ever issued under this act of confirmation was sufficient to put upon notice plaintiff in error and everyone else dealing with this grant.

A survey having been made, the field notes thereof returned to and filed in the General Land Office, and still no patent issued, when, as the evidence shows, *every other confirmed grant in that locality, of which there were several, had been duly patented as provided for in this act or judgment of confirmation*, was sufficient to cause suspicion to deepen into certainty that there was something wrong with this Blucher survey, which would not have been relieved in the mind of the most careless person by the facts that the survey was delineated on the map in the Land Office, and that the State had never by suit or otherwise asserted its claim.

So far as the record goes, plaintiff in error's case is as bare of equity as it is of law.

Fourth. That failure of the State of Texas to assert her title to the land sued for, until the institution of this suit, shows acquiescence in and recognition of the claim of plaintiff in error to the boundaries of the Blucher resurvey, and becomes an element in a contract therefor with the owners of the Santa Rosa de Arriba grant.

In reply to this we content ourselves with a mere reference to what we have said elsewhere upon that feature, including the authorities cited on the question of estoppel against the State.

THIRD COUNTER-PROPOSITION.

Whether considered by itself alone or in connection with the Blucher resurvey of the Santa Rosa de Arriba grant, the act of confirmation of February 10, 1852, by the Legislature of the State of Texas, did not constitute a contract between the owners of said grant and said State concerning the lands which were awarded by the State courts to the defendant in error, the State of Texas.

STATEMENT.

See general statement of case, set out in brief for plaintiff in error, as corrected by us.

See, also, our supplemental statement of the case and statements under First and Second Counter-Propositions, *supra*.

AUTHORITIES.

Same as under First Counter-Proposition.

ARGUMENT.

Clearly, and beyond dispute, no portion of any of the three tracts which were awarded to the State of Texas by the judgment in this cause was included by the boundaries of the original grant of 1834 made by the Mexican State of Tamaulipas to Pedro de la Garza.

Brushing aside, as not within the meaning, scope and legal effect of the provision of the Constitution of the United States, which forbid the passage of a law impairing the obligation of contracts, all the other features relied upon by plaintiff in error, we find that the only vestige, or, rather, the only semblance of a contract which may possibly serve to support his contention is to be found in the above-mentioned act of confirmation of 1852. Do its provisions extend to and embrace the lands so awarded to the State—lands which were not in the original grant to la Garza? We earnestly insist that they do not.

We respectfully urge that our construction of this statute and our contention in this case are amply supported and sustained by the record and by well known facts of public history.

This original grant was by the Mexican State of Tamaulipas in 1834. The Republic of Texas came into existence in 1836, and its Congress, by an Act approved December 19, 1836, asserted the jurisdiction of that Republic westwardly to the Rio Grande, embracing the land involved in this suit. (Gammel's Laws of Texas, Vol. 1, p. 1193, bottom.)

Ever since the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico, and proclaimed July 4, 1848, the State of Texas, through its legislative, executive and judicial departments, has recognized many grants of land lying within that State and emanating from the Spanish or Mexican governments and having their origin within proper time, as being within the protection guaranteed by that treaty. U. S. Rev. Stats., Relating to Treaties, etc., Guadalupe Hidalgo, p. 495. See above quoted Act of the Legislature of Texas, approved September 3, 1901, p. — of our brief; Clark vs. Hills, 67 Texas, 145; State vs. Bustamente, 47 Texas, 320; City of Brownsville vs. Basse and Hord, 36 Texas, 461; Corrigan vs. State of Texas, 94 S. W. Rep., 95.

In this connection, however, see McKinney vs. Saviego, 18 Howard, 240.

And during all that time the State of Texas has, through all its departments of government, carefully safeguarded and protected all such titles in their entirety. Never at any time, not even in the act of confirmation and judgment here complained of by plaintiff in error, has there been manifested any desire whatever upon the part of any of the State authorities to deprive the owner of any such Mexican grant of anything to which he is legally or morally entitled—much less to

impair the obligation of any contract which he or those under whom he claims ever had with the State of Texas.

In line with that policy was the Act of the Legislature of the State of Texas, approved February 8, 1850 (Gammel's Laws, Vol. 3, pp. 582-7, bottom), which provided for the appointment of what has since been known as the Bourland and Miller Commission.

The salient features of said statute, in so far as they are applicable to this case, were as follows:

Section 1 made it the duty of the two Commissioners "to receive and examine all titles and claims to land lying within the counties of Kinney, Webb, Starr, Cameron, Nueces, Presidio, El Paso, Worth and Santa Fe, which emanated from the governments having and exercising jurisdiction over the country prior to the 2d day of March in the year eighteen hundred and thirty-six, and report the same as hereinafter provided."

Section 2 provided that said Commissioners should take the oath of office prescribed by the Constitution, "and in addition thereto, that they will not recommend any title or claim to land for confirmation which they have reason to believe is antedated, forged or fraudulent," etc.

Section 3 prescribed the time for holding sessions of the Board within said counties, respectively.

Section 4 provided for the issuance and posting of notices "requiring all persons holding claims to lands in said county to present the same, together with their evidences of right, to said Board for investigation, within the time prescribed for holding the sessions of the same within said county."

Section 5 provided that said Board should take cognizance of all claims to lands within the county in which they were sitting, held under authority of the government having and exercising jurisdiction in said county, provided such claim had its origin in good faith prior to March 2, 1836.

Section 6 provided, "that each of said claimants shall lay before and file with said Board, written in the English language, a full description of the land claimed, setting forth particularly its situation, boundaries and extent, and the titles, or evidences of title, or right under which the same is held or claimed, and the said Commissioners shall investigate the same (in) accordance with the principles of equity and report the same for confirmation, when the title is perfect, or when imperfect, when the same might have been matured into a perfect title under the laws, usages and customs of the government under which it originated, had its sovereignty over the same not passed to, and been vested in the Republic of Texas; provided, said title or said imperfect title or right was originally founded in good faith."

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Section 7 required that each claim filed with the Board should be accompanied by affidavit of the claimant as to the genuineness of the claim and as to the claimant's ownership thereof, etc.

Section 8 conferred upon the Commissioners power to administer oaths and to issue subpoenas and prescribed penalties for failure to observe such process.

Section 9 provided, "that the said Board shall make an abstract of every claim so filed, and the evidence adduced in support of, or against it, and shall accompany the same with a statement of their opinion of its genuineness and validity, and whether the same ought to be confirmed or rejected, having a due regard to the principles of justice and to the laws, ordinances, rules and customs of the government and authorized political authorities under which the claim originated, which reports, accompanied by the muniments of title, made previous to the session of the next Legislature, shall be made to the Governor in time to be submitted to the Legislature at the commencement of the next session."

Section 13 declared, "that the provisions of this act shall in no manner affect patents, surveys or locations made in the Republic or State of Texas previous to its passage, but that they shall have the same validity, and be adjudicated in the same manner as if this law had not passed, and no patent shall issue on locations which have been, or which may be made until hereafter authorized by law, except those claims heretofore surveyed in the county of Kinney, which may be patented."

Section 17 provided, "that the Governor, by and with the consent of the Senate, if in session, shall appoint an attorney, whose duty it shall be to represent the interests of the State, and whose compensation shall be the same as that of the Commissioners, and in case of a disagreement of said Commissioners, they shall state in writing the facts or points with regard to which they disagree, and each Commissioner shall assign the reasons for his opinion, and said attorney shall take the same oath prescribed in this act to be taken by the Commissioners in addition to the oath prescribed for district attorneys."

Pursuant to said act said Commission made long and careful investigations and examinations concerning the location, boundaries and ownerships of Mexican land grants in the counties mentioned in said act, and reported to the Legislature of Texas their conclusions in the premises.

Following the recommendations of said Commissioners in their report of their labors and findings, the Legislature of Texas passed said Act of Confirmation of February 10, 1852, the material features of which are shown in statement under our First Counter-Proposition.

The plaintiff in error's brief contains numerous references to Corrigan vs. The State of Texas, 94 S. W. Rep., 95. That case was decided

by the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin—the same Court of Civil Appeals which decided the case at bar in favor of the State of Texas, and its decision in the *Corrigan case* was affirmed by the Supreme Court of Texas, 94 S. W. Rep., 101.

That case, like this, arose under the above mentioned Act of 1901, and it also involved a grant which was originally made by the Mexican State of Tamaulipas, and which was confirmed by the above mentioned Act of Confirmation of 1852. A resurvey had been made, field notes thereof had been returned to the General Land Office of Texas, and patent based thereon had been issued. The resurvey and field notes and patent thereunder excluded a portion of the original grant to Diego Ynojosa. In the suit by the State for the recovery of such excluded portion, the owners of the original grant defended under their Mexican title, but *not under the patent.* The Court of Civil Appeals reversed the decision of the trial court (which was in favor of the State), and rendered judgment against the State, holding:

First—That the owners of the original grant were not shown to have had the resurvey made or to have accepted the patent which was based thereon. This was the real turning point in the case.

The Court of Civil Appeals said:

"The land described in the patent merely embraced five leagues. The original Ynojosa grant contains about 4500 acres in excess of five leagues. In this connection the appellants complain of the legal conclusion of the trial court to the effect that the predecessors in title of appellants accepted the patents and the boundaries contained therein, and can not now assert a right to the limits and boundaries of the original grant.

"This brings us to what we regard as the important question in the case. There is no evidence in the record that the survey subsequent to the legislative confirmation was caused to be made by those asserting the title in the Ynojosa grant, nor that the issuance of patents was procured by them. It is true, the field notes are on file in the Land Office, and the patent was undoubtedly issued; but there is no evidence, as before said, showing that these parties procured the surveyor to make a survey, nor is it shown that the patent was ever issued and delivered to them or to anyone representing them. If they were asserting a right under these documents, it could be assumed that they were connected with their issuance and execution, but the court finds, in its fifth subdivision, that the defendants are solely claiming under the Diego Ynojosa grant. If it could be conceded that they did go before Miller and Bourland and make proof, and that the Legislature subsequently confirmed the grant, or released the right of the State to the same, it would not necessarily follow that they caused a survey to be made and accepted a patent predicated upon the confirmation for less land than they were thereby entitled to, and for less land than the Legislature intended they should receive.

"Now the Act of 1852 that confirms the Ynojosa grant does not attempt to set out the boundaries, but merely releases the right of the State to five leagues, and is a direct confirmation of the Diego Ynojosa grant; and the act providing for the survey, in express terms, states that no patent shall issue for a less amount than the original grant. These people, situated, as Diego Ynojosa was, within the territory where the titles were directed to be investigated by the commission appointed, could with safety go before that body, relying upon the fact that, if their grants were valid and legal, they would receive the recognition and respect due them under the laws of the former government, which were guaranteed by the treaty of Guadalupe Hidalgo; and that, if thus recognized as being valid, the recognition would extend to every acre of land included within the original boundaries. The Legislature in the Act of 1852 was actuated by this spirit, for they expressly stated that the patent should not issue for a less amount than the original grant. That was a part of the scheme of confirmation, and they never expected, and it was never intended, to confer upon a surveyor, who should exercise his functions under that act, power to locate the land just as he saw fit or desired to do, and thereby reduce the quantity to less than what could be lawfully ascertained to be within the limits of the original grant. The law was an express limitation upon the power of the Commissioner of the Land Office to issue a patent for a less amount than the original grant. It was nothing unusual in that time and day, when the Ynojosa was originally granted, that the Surveyor General of the State of Tamaulipas, or of other States of Mexico bordering on the frontier, should so survey these original grants as to contain a large excess of land. The lands were regarded of little worth, and their principal value was for pasturage purposes. It is a fact, familiar to all who have had occasion to investigate original grants lying within that territory, that they generally contained a large excess. And we have found nothing in the law of Tamaulipas, or of the Republic of Mexico, that is applicable to the title in question, that would denounce or declare illegal a title or grant issued on the ground that it contained an excess equal to the number of acres shown in the Ynojosa.

"This being true, the Legislature, when they released the right of the State, released it to the boundaries of the original grant; and the surveyor appointed under that law had no authority to disregard this legislative purpose and intent, and to make a survey that would materially cut down and reduce the quantity of land contained in the original grant. But, however, having done so, the claimants or those asserting the right and title to the original grant—evidently it could be assumed—declined to accept and be bound by the work of that surveyor, or to receive and accept a patent based thereon and subsequently issued, but doubtless preferred to stand upon the right and title conferred by the original grant. After the field notes were returned to the Land Office and there filed, by the official surveyor who was charged with the duty of making the survey under the Act of February 10, 1852, the Commissioner of the Land Office doubtless regarded it as his duty to issue a patent, probably not having any knowledge of the fact that the original grant had been materially reduced in quantity by the new survey. The findings of the court in these particulars complained of are, in our opin-

ion, opposed to the evidence, or the reasonable deductions to be drawn from it. The facts more nearly justify the fifth finding of the trial court."

Said fifth finding was as follows: "Defendant claims the land in suit solely under the Diego Ynojosa grant."

Second—"The court finds, practically, that the land in controversy is within the limits of the original grant and the testimony upon this question clearly confirms us in this view of the trial court. In fact, as we construe the evidence in the record concerning the calls and the evidence of the location of the surrounding surveys, in connection with the juridical possession, there can be no controversy, in our opinion, as to the fact that the original Diego Ynojosa includes all of the land sued for."

We can not see how counsel for plaintiff in error derive comfort out of that opinion. On the contrary, we think it strongly supports our contention in this case.

Where it is contended that the obligation of a contract has been impaired, the first inquiry is, naturally, as to the existence of such contract. (St. Paul Gas Light Co. v. St. Paul, 181 U. S., 147.)

We deny that plaintiff in error or any other owner of the Santa Rosa de Arriba grant ever had with the State of Texas any contract whatever concerning or in anywise affecting all or any portion of all or any of the three tracts of land which were, by the judgments of the State courts, awarded to the State of Texas in this suit. As to said three tracts there was no contract to impair.

Because of the fact that in determining such motion a review of the whole case by this court would probably have become necessary, we have not considered it advisable to file a formal motion to dismiss upon the ground that this cause presents no controversy within the jurisdiction of this court.

But we now ask that this cause be dismissed for the reason that it involves no question arising under the Constitution or laws of the United States. And in the event this court shall find that the defendant in error is not entitled to have this cause dismissed upon the ground stated, we respectfully ask, in the alternative, that the judgment of the State courts be affirmed.

With regard to the contention made on behalf of the plaintiff in error to the effect that the record in this case is unduly voluminous, we have to say that our insistence upon having the entire record before this court was based upon the belief that with the entire record before it, this court could better understand and see the fallacy of the contentions of the plaintiff in error, especially those relating to the acceptance and recogni-

tion by the State of Texas of the Blucher resurvey of the Santa Rosa de Arriba grant as correct and binding upon the State and the legal effect of the calls for the lines of that grant which appear in the field notes and patents to contiguous Mexican grants and later railroad surveys.

Robert Vance Davidson

Attorney General of Texas,

William S. Hawkins,

Assistant Attorney General of Texas,
For the State of Texas, Defendant in Error.

SULLIVAN *v.* TEXAS.

ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

No. 91. Argued December 20, 1907.—Decided January 6, 1908.

Where the highest court of the State dismisses an application for writ of error for want of jurisdiction, the judgment of the lower court becomes the judgment of the highest court of the State to which the case can be taken, and the writ of error will properly run to it from this court.

If the constitutional question is distinctly presented to the state court on motion for rehearing, and is considered and decided adversely, it is properly presented in time and this court has jurisdiction to review the judgment under § 709, Rev. Stat.

This court determines for itself whether an act of the legislature of a State amounts to a contract within the impairment of obligation clause of the Federal Constitution.

A state statute confirming a grant of the former sovereign and specifying the area and providing for a survey to ascertain metes and bounds and for filing the field notes does not amount to a contract within the impairment clause of the Constitution that the State will abide by the survey even though it includes more than the original grant.

The act of February 10, 1852, of Texas, confirming Mexican grants, did not amount to a legislative contract to abide by the surveys to be made of such grants; nor is the act of September 3, 1901, directing actions to be brought to recover land wrongfully in possession of grantees in excess of the amount of the original Mexican grant, but included in the survey made under the act of 1852, unconstitutional as impairing the obligation of a contract.

95 S. W. Rep. 645, affirmed.

THIS case comes to us from a state court and our jurisdiction is invoked on the ground of a law of the State charged to work an impairment of the obligation of a contract. The facts are that in 1834 the Mexican State of Tamaulipas granted to Pedro de la Garza a tract of land. The grant, signed by the governor, recited that the grantee had paid the appraised value, $204; that the grant contained "six and a half leagues of pasture land for large cattle, comprehended in the boundaries, angles and demarkations which appear in the attached map, countersigned with the seal of this government, signed with a rubric by my secretary, which, for greater distinctness,

are set out in the present title in the following mode: El Alcatraz and San Antonio of the waterfall, east to west on the north side; San Antonio and the Sacramento, north to south on the west; Sacramento and San Francisco, west to east on the south; San Francisco, San Pedro and El Alcatraz, south to north on the east. The pasture land is bounded on the north by Los Olmos Creek and on the rest of the sides by vacant lands."

Accompanying the grant was a plat showing an irregular hexagon and a survey made by Antonio Canales, as follows:

"The inclination to the southeast of the Olmos Creek figured in the survey of the irregular hexagon, which appears depicted, which contains six leagues of pasture land for large cattle and 20,782,500 square varas according to the units fixed by the law of the State for agrarian measures. The angular boundaries and most notable places which were defined were the following: A, boundary of the Alcatraz; B, boundary of San Antonio of the waterfall; C, boundary of Sacramento; D, boundary of San Francisco; r, lateral boundary of this pasture and angular of the Santa Rosa de Abajo, called San Pedro; e, lake of the sheep pen; m, n, ponds and heights of the waterfall; o, the little pond. The rectangle h, i, g, l, was ceded to this pasture by citizen Pedro Villareal, of which it was defined in the terms which appear in the file of this survey, A. M. B., the Olmos Creek. The survey was made with the greatest exactness, remeasuring the cord every half league and correcting the ten leagues of declination to the northeast, which the compass needle has in these lands. This pasture is bounded on the north by the creek, on the east by the pasture of Paistle and on the rest by vacant lands.

"Carmargo, Dec. 5th, 1832. ANTONIO CANALES."

Thereafter Tamaulipas became a part of Texas, and that State, on February 10, 1852, passed an act confirming this among other grants. Laws, General, Fourth Legislature, ch. 71, p. 63. The act of confirmation, so far as is material, provided by § 1 "that the State of Texas hereby relinquishes

all her right and interest in the following-described lands to the original grantees thereof, their heirs and legal assigns, to wit: County of Starr . . . (103) Pedro de la Garza, six and one-half leagues, called 'Santa Rosa,' . . ." Section 2 of the act is as follows (p. 71):

"SEC. 2. That it shall be the duty of those claiming any of the lands named in this act, to have the same surveyed by the district or county surveyor of the county in which the same may be situated, and upon the return of the field notes thereof to the General Land Office, the Commissioner is hereby authorized and required to have the same plotted on the maps of his office, and issue patents for the same in accordance with existing laws; provided, that no patent shall issue for a less amount than the original grant. That the owners of said lands shall be required to pay the taxes due on the same, from the date of the organization of the respective counties herein mentioned; which taxes shall be paid, and legal vouchers for the same exhibited to the Commissioner of the General Land Office before the patent to the same shall issue."

In May, 1859, Felix A. Blucher, a deputy district surveyor of the district, made a survey, the field notes and a plat of which were in August, 1869, filed in the General Land Office. The field notes commenced with the statement:

"Field notes of a survey of Eight leagues and twelve labores of land made for Wm. G. Hale and F. J. Parker the assignees of Pedro de la Garza this being the quantity of land to which they are entitled by virtue of a grant from the State of Tamaulipas dated on the 3rd day of July A. D. 1834. Surveyed in accordance with an act of the legislature of the State of Texas, approved Feb'y 10th, 1852, and entitled 'An act to relinquish the right of the State to certain lands therein named this being part of confirmation numbered 103 for the County of Starr in said Act.'"

This survey was not approved, and the field notes were indorsed by the Commissioner of the General Land Office in these words: "Closes partly all but the approximate area

found with apportioning errors is 267,552,959 sq. vrs.—10 Leagues 17½ Labores or 55,252,959 sq. vrs. too much. Aug. 21, '69, Richardson, $2.00."

No patent was ever issued for the land or any part of it. On September 3, 1901, the legislature of the State of Texas passed an act, § 11 of which is as follows:

"SEC. 11. The attorney general of this State is hereby directed and required to institute and prosecute, in the name of the State of Texas, such suits as may be necessary to recover from the person or persons in possession thereof or claiming title thereto, all lands which are held or claimed under titles emanating from the Spanish or Mexican governments where no valid evidence of such grants are to be found in the records or among the files of the General Land Office; and also such suits as may be necessary to determine the exact location and boundaries of such lands, where the evidence on file in the General Land Office does not sufficiently identify the land claimed; and such suits shall be brought, prosecuted and tried in the District Court of Travis County, Texas."

In pursuance of this section this suit was brought, the original petition having been filed September 24, 1902.

The defendant holds title under the original grantee of the State of Tamaulipas, and was and had been for many years in possession of the entire tract of over ten leagues surveyed by Blucher, claiming title to all in his possession. The State, conceding his title to six and one-half leagues, contended that all in excess was still its property. The case was tried before the court without a jury and a judgment entered in behalf of the State for three tracts, which the court found to be outside the boundaries of the original Mexican grant. The Court of Civil Appeals in and for the Third Supreme Judicial District of the State affirmed this judgment. 95 S. W. Rep. 645. A petition for rehearing was filed, in which the protection of the contract clause of the Constitution of the United States was specially invoked. In denying the motion for a rehearing the court considered this constitutional question and decided it

adversely to the plaintiff in error. Thereupon a petition was presented to the Supreme Court of the State for a writ of error to review the judgment of the Court of Civil Appeals, but that court dismissed the application for want of jurisdiction.

Mr. Charles W. Ogden, with whom *Mr. J. C. Sullivan* was on the brief, for plaintiff in error:

This court will ascertain and determine for itself, in a case of this character, whether or not a contract existed, and, if so, its import, and whether it has been impaired by state legislation. *Muhlker* v. *Harlem Railroad Co.*, 197 U. S. 571; *Kies* v. *Lowrey*, 199 U. S. 239; *H. & T. C. Ry.* v. *Texas*, 177 U. S. 76; *St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S. 147.

The act of February 10, 1852, confirming the grant in controversy and providing for a settlement of its boundaries by an official survey, was a proposition made by the State to the landowner, which, upon acceptance, as evidenced by the survey at the request of the owner and the return of the field notes to the General Land Office, ripened into a valid contract, which was binding upon both parties thereto.

When the survey is made and the field notes thereof are returned as required by law, it is conclusive evidence against both the Government and the claimant that the land granted by the confirmation of Congress was the same described and bounded by the survey. This consideration depends on the fact that the claimant and the United States were parties to the selection, and mutually bound and respectively estopped by it.

In such a case the patent is not necessary to perfect, nor does it add anything to, the title, but only serves as an evidence thereof.

In such a case the binding force and effect of the resurvey and the act of confirmation is not dependent upon, nor can it in any manner be affected by, an inquiry into the question as to whether or not the boundaries of the grant are correct.

Langdeau v. *Hanes*, 21 Wall. 521; *Clark* v. *Hills*, 67 Texas, 141; *Menard Heirs* v. *Massey*, 8 How. 293; *Guitard* v. *Stoddard*, 16 How. 494; *West* v. *Cochran*, 17 How. 403; *Ryan* v. *Carter*, 93 U. S. 78; *Morrow* v. *Whitney*, 95 U. S. 551; *United States* v. *Roselius*, 15 How. 34; *Arguello* v. *United States*, 18 How. 539; *Forbes* v. *Withers*, 71 Texas, 472; *Commonwealth* v. *Pejepscut, Prop.*, 10 Massachusetts, 156; *Rutherford* v. *Grienes Heirs*, 2 Wheat. 196; *Howard* v. *Perry*, 71 Texas, 266; *Hamilton* v. *Avery*, 20 Texas, 635; *Wright* v. *Hawkins*, 28 Texas Supp. 408.

In such a case the official survey can only be avoided by the sovereign by timely allegations and proof of fraud, to which the claimant is a party. *White et al.* v. *Burnley*, 20 How. 247; *Maxey* v. *O'Connor*, 23 Texas, 234; *Smith* v. *Hughes*, 23 Texas, 249; *Elliott* v. *Mitchell*, 28 Texas, 111; *Railway* v. *State*, 81 Texas, 602; *Howard* v. *Colquhoun*, 28 Texas, 134; *Land Company* v. *State*, 1 Texas Civ. App. 621.

Section 11, of the act of September 23, 1901, when construed and enforced, as it was in this case, by the Court of Civil Appeals, as authorizing the institution by the Attorney General of this suit and the recovery herein of land to which the title of plaintiff in error and his predecessors had been perfected under the contract, as evidenced by the act of confirmation of 1852 and the resurvey thereunder and the return of the field notes to the General Land Office, impairs the obligation of said contract and is, therefore, in violation of, and contrary to, the provision of paragraph 1, of section 10, Article I, of the Constitution of the United States. *Houston & Texas Central R. R.* v. *Texas*, 177 U. S. 76; *St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S. 147.

It is not too late to raise a Federal question on motion for rehearing, if the question is considered and passed upon by the state court. *Leigh* v. *Green*, 193 U. S. 85; *Mallett* v. *North Carolina*, 181 U. S. 589.

Mr. William E. Hawkins, with whom *Mr. Robert Vance*

Davidson, Attorney General of the State of Texas, was on the brief, for defendant in error:

The confirmation shown by the act of February 10, 1852, applied to the land embraced in the original grant to Pedro de la Garza, and not to the land awarded to the State of Texas by the judgment in this cause.

None of the three tracts awarded by the judgment in this case to the State of Texas was within the lines of the original grant as surveyed by Canales. *Ryan* v. *Carter*, 93 U. S. 82; *Langdeau* v. *Hanes*, 21 Wall. 529; *Clark* v. *Hills*, 67 Texas, 145; *Corrigan* v. *State of Texas*, 94 S. W. Rep. 95; *Love* v. *Barber*, 17 Texas, 320; *Welder* v. *Carroll*, 29 Texas, 333.

Whether considered by itself alone or in connection with the Blucher resurvey of the Santa Rosa de Arriba grant, the act of confirmation of February 10, 1852, by the legislature of the State of Texas, did not constitute a contract between the owners of said grant and said State concerning the lands which were awarded by the state courts to the defendant in error, the State of Texas.

MR. JUSTICE BREWER, after making the foregoing statement, delivered the opinion of the court.

By the action of the Supreme Court of the State the judgment of the Court of Civil Appeals became the judgment of the highest court in the State to which the case could be taken, and hence the writ of error properly ran to that court. The constitutional question, although not raised theretofore, was distinctly presented in the petition to the Court of Civil Appeals for a rehearing, was considered by that court and decided adversely to the plaintiff in error. This court, therefore, has jurisdiction. *Mallett* v. *North Carolina*, 181 U. S. 589, 592; *Leigh* v. *Green*, 193 U. S. 79; *French* v. *Taylor*, 199 U. S. 274.

Coming to the merits, it is obvious that the act of 1852 was simply a confirmation of grants made by the Mexican States.

There is nothing in it which suggests the thought of new grants or of addition to old ones. The first section declares that the State "relinquishes all her right and interest in the following-described lands to the original grantees thereof," and names the amount of land included in this grant so relinquished, six and one-half leagues. The second section makes it the duty of claimants to have surveys made of their existing grants. The third section makes provision in case of the loss of the "original title papers of lands claimed by this act," while § 5 speaks of "the confirmation herein extended to the lands mentioned in this act."

But it is contended that there was an existing Mexican land grant binding upon the State of Texas as the successor of the former government; that the act of 1852 not only confirmed the grant, but also by the second section provided for a settlement of its boundaries through an official survey; that this was a proposition made by the State to the claimant of the grant which upon acceptance, as evidenced by the survey at the request of the owner and the return of the field notes to the land office, ripened into a valid contract; that when the survey was made and the field notes returned, as required by law, it became conclusive evidence against both the State and the claimant that the land surveyed was that granted by the Mexican State and confirmed by the legislature of Texas. This argument makes the survey the pivotal fact upon which the question of contract turns. Of course, whether there was or was not a contract is a question which, in a case like the present, this court must determine for itself. *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 443; *McCullough* v. *Virginia*, 172 U. S. 102, 109; *H. & T. C. Railway* v. *Texas*, 177 U. S. 66, 77; *St. Paul Gas Light Company* v. *St. Paul*, 181 U. S. 142, 147; *Muhlker* v. *Harlem Railroad Company*, 197 U. S. 544, 570.

It will be perceived that § 2 does not name the individual to act for the State, but only designates certain officials, any one of whom may make the survey, and imposes a duty upon the claimant of causing the survey to be made. It does not

prescribe the time within which the survey must be made. In fact, it was not made until seven years after the passage of the act, and the field notes were not filed until ten years after that. The purpose of the act was to enable the claimant to acquire a patent as better evidence of title, with a more accurate description of boundaries. The surveyor is not named as an agent of the State. On the contrary, an official act, that of survey, was authorized to be made at the instance of the claimant, but a mere surveyor is not by virtue of his office empowered to change boundaries. Those were given in the original Mexican grant, and his function was simply to resurvey, making the description more definite and certain. It could not have been within the contemplation of the legislature that this surveyor, picked out by the claimant, should have power to bind the State, by the mere matter of survey, to a grant nearly double the size of that which it confirmed by this statute of relinquishment. It must be borne in mind that the original grant was not a float—that is, a grant of so many acres to be located inside of a larger tract, in which the surveyor might have a discretion in selecting the particular tract—but it was a grant by metes and bounds, and the sole function of the surveyor was ministerial, to locate the tract and more fully describe those metes and bounds.

In all these proceedings the substantial elements of a contract are lacking. The State of Texas, succeeding to the sovereignty of the former government, recognized all that might, under any circumstances, be considered its international obligation and confirmed the title which had been made. It made no grant of additional land. It simply relinquished all claims to that which had been granted by the former sovereign and confirmed the title made by that grant. It received no consideration. As the description in the original survey was defective, it provided means for perfecting that description and authorized a patent, which is the highest evidence of title. On the other hand, the grantee, holding a grant from the State of Tamaulipas, received from the State of Texas no grant or

promise of additional land, but simply a declaration of its willingness to recognize and confirm the Mexican grant. He paid nothing to the State, but was only accorded by it the means of making his title definite and certain and the boundaries of his grant beyond question. In short, it was simply a proceeding established by the law of the State for making clear and certain the boundaries of grants which the State was willing to recognize, and in that proceeding a certain official of the State was charged with the ministerial duty of making a survey. He was given no authority to enlarge or diminish the grant, but only to ascertain what the real boundaries were. Further, the State has never given a patent, although this suit was not commenced for fifty years after the act of relinquishment, forty-three years after the survey and thirty-three years after the filing of the field notes in the state land office.

The decision of the Court of Civil Appeals was right, and its judgment is

Affirmed.